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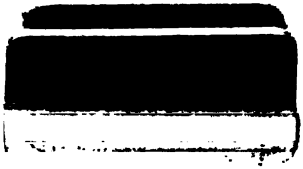

Marriage and Divorce Laws of the World

Edited by
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"Marriage is the mother of the world, and preserves kingdoms, and fills cities, and churches, and heaven itself."—Jeremy Taylor

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PREFACE

The purpose of this volume is to furnish to the lawyer, legislator, sociologist and student a working summary of the marriage and divorce laws of the principal countries of the world.

There are no geographical boundaries to virtue, wisdom and justice, and no country has as yet monopolized all that is best in creation. The mightiest of the nations lacks something which is possessed by the weakest; and there is no branch of comparative jurisprudence of more general consequence than that treating of marriage, which is the keystone of civilization.

By "civilization" we do not mean community life according to the standard of a single individual or nation, but in its broader and better sense, meaning the civil organization of any large group of human beings.

This book is not a brief in favour of, or against, any particular social system or legal code, nor has it a mission to assist in the reformation of any country's marriage and divorce law. In the compilation which follows our endeavour is simply to set forth positive law as it exists to-day, leaving its correction or development to the proper authorities.

The editor has lived among the books of the British Museum, the Bibliothèque Nationale and other great libraries for years, seeking in vain for just such a compilation as is here humbly presented. We hope, therefore, that whatever may be its imperfections the book is justified, and will be welcomed as the first of its kind.

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In its compilation we have been pleased to observe that the evident trend of modern legislation is toward uniformity among the nations of Christendom on the vital subjects of marriage and divorce. In fact, modernity brings uniformity in every department of public and private law—a consummation devoutly to be wished for by those who feel that, no matter how short may be the individual's life, he is nevertheless a kinsman to all of the race who have gone before or are yet to come.

A study of the marriage laws of the world has also brought the happy conviction that the wholesome view of marriage as the union of one man and one woman for life, to the exclusion of all others, is the one triumphant fact of human history which can never lose its prestige.

The surest sign of the general betterment of the world's law is that woman everywhere is more and more being allowed her natural place in the community as man's equal and associate. That nation is most enlightened which treats its womankind the best. All the legislation of the past century bearing on the subject of marriage has elevated men by giving more justice to women.

When the next Matrimonial Causes Act predicated upon the labours of the present Royal Commission on Marriage and Divorce is passed by the British Parliament, women will be given equal rights with men in our courts of law. The jurisprudence of England was not built for a day, and we are a people singularly bound by precedent, but when John Bull moves it is always in a straight line, and he never turns back.

H. R.

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Marriage and Divorce Laws of the World

CHAPTER I.

Introduction.

Marriage is the oldest and most universal of all human institutions. According to the Chinese Annals in the beginning of society men differed in nothing from other animals in their way of life. They wandered up and down the forests and plains free from the restraint of community laws or morality, and holding their women in common. Children generally knew their mothers, but rarely their fathers.

We are told that the Emperor Fou-hi changed all this by inventing marriage. The Egyptians credit Menes with the same invention, while the Greeks give the honour to Kekrops.

In the Sanscrit literature we find no definite account of the institution of marriage, but the Indian poem, "Mahabharata," relates that until the Prince Swetapetu issued an edict requiring fidelity between husband and wife the Indian women roved about at their pleasure, and if in their youthful innocence they went astray from their husbands they were not considered as guilty of any wrong.

The Bible story of the institution of marriage is contained in the Second Chapter of Genesis, 18th to the 25th verse. It is not within the purpose of this treatise to argue for or against the acceptance of the Bible narrative, so we call attention

without comment to the extreme simplicity of the wedding ritual as stated in the 22d verse:

"And the rib, which the Lord God had taken from man, made he a woman, *and he brought her unto the man.*"

Among primitive men marriage was concluded without civil or religious ceremony. Even in modern Japan a wedding ritual is considered all but superfluous.

The principal marriage ceremonies have been derived from heathen customs; they were: the *arrhae,* or espousal gifts, an earnest or pledge that marriage would be concluded; and the ring betokening fidelity.

Among the ancient Hebrews marriage was not a religious ordinance or contract, and neither in the Old Testament nor in the Talmud is it treated as such.

As with the Mohammedans it was simply a civil contract.

Under the old Roman law there were three modes of marriage: 1. *Confarreatio,* which consisted of a religious ceremony before ten witnesses, in which an ox was sacrificed and a wheaten cake was broken by a priest and divided between the parties.

2. *Coemptio in manum,* which was a conveyance or fictitious sale of the woman to the man.

3. *Usus,* the acquisition of a wife by prescription through her cohabitation with the husband for one year without being absent from his house three consecutive nights.

But a true Roman marriage could be concluded simply by the interchange of consent.

There was an easy morality of the olden times which according to present standards was akin to savagery. The Greeks even in the golden age of Pericles held the marriage relation in very little

sanctity. It was reputable for men to loan their wives to their friends, and divorce was easy and frequent. Hellenic literature attempted to make poetry of vice and marital infidelity, and adultery was the chief pastime of the gods and goddesses.

The Romans had more of the moral and religious in their character than the Greeks, but still we read of Cato the younger loaning his wife Marcia to Hortensius and taking her back after the orator's death.

In the Second Chapter of the Gospel according to St. John we find that Jesus was a guest at a marriage in Cana of Galilee. His attendance at the wedding feast is not notable for His having on this occasion given the marriage contract the character of a sacrament, for nothing in the record even hints at this. The account is principally noteworthy as the history of His first miracle, that of turning water into wine.

It was from the Fifth Chapter of the Epistle of St. Paul to the Ephesians that the dogma that marriage is a sacrament was gradually evolved. In this chapter the Apostle points out the particular duties of the marriage status, and exhorts wives to obey their husbands, and husbands to love their wives. "For this cause shall a man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh."

However, the early Christian Church did not treat marriage as a sacrament, although its celebration was usually the occasion of prayers and exhortations.

It was not until the year 1563, by an edict of the Council of Trent, that the oldest branch of the Christian Church, namely, that governed by the See of Rome, required the celebration of marriage to be an essentially religious ceremony.

The general marriage law of the European con-

tinent has been derived and developed from the edicts of the Roman emperors and the decrees of the Christian Church. This historical evolution is strikingly apparent when we read the definition of marriage as given in the Institutes of Justinian: *Nuptiae autem, sive matrimonium est veri et mulieris conjunctio, individuam vitae consuetudinem continens.* Marriage is the union of a man and a woman, including an inseparable association of their lives.

There are as many definitions of marriage as there are views concerning it, but none of them improve very much upon that given in the Institutes.

It is also worth noting that the impediments to lawful marriage were very nearly the same under the Roman Empire as they are to-day in most civilized countries. The 18th Chapter of the Book of Leviticus appears to have set the standard. There are three principal forms of marriage, namely, monogamy, polygamy and polyandry. Monogamy, or the condition of one man being married to but one woman at a time, appears to be not only the best but the most ancient and universal type. It was, according to the Bible, good enough for the first husband, Adam, for his only wife was Eve. The first polygamist on the same authority was Lamech, who was of the sixth generation after Adam, for he "took unto him two wives." Reading in the First Book of Kings, we are informed that King Solomon had "seven hundred wives, princesses, and three hundred concubines." A round thousand. However, polygamy, or the marriage of a man to more than one wife at the same time, was not the rule even among the ancient Hebrews. Such a trial was left to kings and other luxurious persons.

Polyandry is the condition of a woman having

more than one husband at the same time. It evidently had its origin in unfertile regions in the endeavour to limit the population to the resources of the district. It is almost a thing of the past, but it is still practised in Thibet, Ceylon and some parts of India.

MORGANATIC MARRIAGE.—A morganatic marriage is a marriage between a member of a reigning or nominally reigning family and one who is not of either of such families. It is a term usually employed with reference to a matrimonial alliance between a man of royal blood (or in Germany of high nobility) and a woman of inferior rank.

Such alliances are sometimes called "left-handed marriages," because in the wedding ceremony the left hand is given instead of the right.

In Germany a woman of high rank may make a morganatic alliance with a man of inferior position. The children of a morganatic marriage are legitimate, but neither they nor the wife can inherit the rank or estate of the morganatic husband.

By the Royal Marriage Act of England such an alliance has no matrimonial effect whatever.

DIVORCE.—Divorce is almost as ancient as marriage, and just as fully sanctioned by history, necessity and authority. In the 24th Chapter of Deuteronomy we read:

"When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her, then let him write her a bill of divorcement, and give it in her hand, and send her out of his house. And when she is departed out of his house, she may go and be another man's wife." This rule was consistent with the patriarchal system of the Jewish commonwealth. The husband as the head of the family could divorce his wife at his pleasure. An illustration of such a divorce

is furnished by Abraham's dismissal or divorcement of Hagar. This was surely a simple divorce law with a summary procedure, much cheaper, quicker and easier than is given by the statutes of several American States. No solicitor, barrister or court was required. The husband constituted himself president of the Court of Probate, Admiralty and Divorce for the special occasion and granted himself a favourable decree. The law of divorce as stated in Deuteronomy continued to be accepted by the Hebrews until the 11th century. It was in full force when Christ was on earth, for it is recorded in the 19th Chapter of the Gospel of St. Matthew that He was questioned concerning it. Jesus had given to the Pharisees His views of marriage in answer to their question: "Is it lawful for a man to put away his wife for *every* reason?" He then stated the proposition that because of marriage a man shall leave father and mother, and shall cleave to his wife, and added: "What, therefore, God hath joined together let not man put asunder."

Then was put to Him the question concerning the existing law: "Why did Moses then command to give a writing of divorcement, and to put her away?" His answer was that "Moses, because of the hardness of your hearts, suffered you to put away your wives: but from the beginning it was not so."

Jesus although disapproving of the breadth of the Mosaic law did not declare against divorce; quite the contrary, for He said: "Whosoever shall put away his wife, *except it be for fornication*, and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery."

Unless we assume that Jesus was concealing rather than expounding His views, the plain mean-

ing is that He considered fornication to be the sufficient and only cause for an absolute divorce.

Josephus interpreted the Jewish divorce law as follows: "He who wishes to be separated from his wife for any reason whatever—and many such are occurring among men—must affirm in writing his intention of no longer cohabiting with her."

The ancient Jewish law made of woman a chattel and a marriage derelict at her husband's pleasure, but it gave the woman no right to divorce her husband for any cause.

The poet, John Milton, in the least worthy of his writings, relied upon the Mosaic law in his specious argument in favour of unlimited divorce.

St. Augustine contended that the question of divorce is not clearly determined by the words of Jesus, but there can be no mistake concerning the theological attitude of the Roman Catholic Church of to-day on this subject. It positively holds that no human power can dissolve a marriage when ratified and consummated between baptized persons.

If one is prepared to concede the principal dogma of Roman Catholicism, namely, the infallibility of the Church, there is no lack of logic or authority in such an attitude, even though it differs or varies from the Mosaic law or the sayings of Jesus.

We must remember, however, that modern divorce law is not founded on theological dogmas or theories, but upon practical social science and humanity.

In most countries there is no distinction between the husband and the wife as to grounds of divorce. The Mohammedan law of Egypt and the statute laws of Belgium and England being conspicuous exceptions to the rule. Usually the domicile of the husband is the place where the action must be instituted, but in the United States of America

a wife may acquire a separate domicile from that of her husband if he has given her cause for divorce.

Divorces of domiciled foreigners are granted in several countries of Europe, provided the cause relied on is a cause for divorce in the native country of the parties, and in most continental countries divorces of natives are granted, whether domiciled in their native country or not, the foundation of jurisdiction being nationality, not domicile. Practically in all countries the exercise of jurisdiction for divorce is not affected by the fact that marriage was celebrated in or out of the country.

The causes for divorce are varied in kind and in number. In some countries of Europe mutual consent is a sufficient cause under certain restrictions. The number of causes for divorce in Europe vary from one in England to twelve in Sweden.

The dream of the academic lawyer is for an international law of marriage and divorce, but the differences between the existing judicial systems of the various great commonwealths of the world are much too great to make a universal law on the subject practicable. In one country only the civil marriage is legal and in another only the ecclesiastical alliance is valid; in one country divorce is allowed, and in another it is denied; in one, difference in religion between the parties is an impediment to marriage, and in another it is not; in one the canon law is controlling, and in another the civil law regulates all questions of matrimonial rights. Even in the matter of age and capacity the greatest variableness exists. As, for instance, the minimum age for marriage. In England it is fourteen for males and fifteen for females; in Germany, twenty-one for males and sixteen for females; In Austria, four-

teen for both; in Russia, France, Holland, Switzerland and Hungary, eighteen for males and sixteen for females; in Spain and Greece, fourteen for males and fifteen for females; in Denmark and Norway, twenty for males and fourteen for females; in Sweden, twenty-one for males and seventeen for females; in Finland, twenty-one for males and fifteen for females; in Servia, seventeen for males and fifteen for females.

It will be observed that the different laws as to the minimum age for marriage do not flow from circumstances of climate, religion or culture, but are mainly historical and arbitrary.

CHAPTER II.

England.

Introduction.—The law of England regards marriage as a contract, a status and an institution. As a contract it is in its essence an expressed consent on the part of a man and woman, competent to make the contract, to cohabit with each other as husband and wife, and with each other only. As Lord Robertson says: "It differs from other contracts in this, that the rights, obligations or duties arising from it are not left entirely to be regulated by the agreement of parties, but are to a certain extent matters of municipal regulation, over which the parties have no control by any declaration of their will."

As a status created by contract, marriage confers on the parties certain privileges and exacts certain duties under legal protection and sanction.

From the earliest period of the recorded history of England it has always been accepted doctrine that marriage as an institution is the keystone of the commonwealth and the highest expression of morality.

The men of the law in England were anciently persons in holy orders, and the judges were originally bishops, abbots, deans, canons and archdeacons. As late as 1857 the clergy in their ecclesiastical courts had exclusive jurisdiction of matrimonial causes. They administered the Canon Law of the Western Church affecting marriage and ruled that in marriages lawfully made, and according to the ordinance of matrimony, the bond thereof can by no means be dissolved during the lives of the parties.

By the passage of the Divorce Act of 1857

the jurisdiction in matrimonial causes was transferred to a new civil tribunal, and absolute divorce was sanctioned, with permission of remarriage on proof of adultery on the part of the wife, or adultery and cruelty on the part of the husband.

It is seriously contended by some eminent churchmen that in spite of this legislation the Church of England still has as its definite existing law the old rule which obtained before the Reformation, namely, that marriage is indissoluble; that a limited divorce from bed and board may be permitted, but that an absolute divorce which leaves either party free to remarry during the lifetime of the other is forbidden. This supposed conflict between the civil and ecclesiastical laws of the realm furnishes an academic topic and engenders bad feeling, but it has no real existence.

The Church of England exists by Act of Parliament and manifestly has no power to nullify statutes enacted by the legislature which established it as the official religious organization of the Kingdom.

The civil courts of England have never considered marriage as a sacrament or religious ordinance, but have held that the dogmas and precepts of Christianity do not affect the civil status of marriage, but simply add to it a religious character. In this respect the law of England is in exact harmony with the attitude of the primitive Christian Church.

Lord Stowell tells us that "in the Christian Church marriage was elevated in a later age to the dignity of a sacrament, in consequence of its divine institution, and of some expressions of high and mysterious import concerning it contained in sacred writings. The law of the Church, the canon law (a system which, in spite of its absurd pretensions to a higher origin, is in many of its

provisions deeply enough founded in the wisdom of man), although in conformity to the prevailing theological opinion, it reverenced marriage as a sacrament, still so far respected its natural and civil origin as to consider that where the natural and civil contract was formed it had the full essence of matrimony without the intervention of the priest, it had even in that state the character of a sacrament; for it is a misapprehension to suppose that this intervention was required as a matter of necessity even for that purpose before the Council of Trent."

The English courts only recognize as a true marriage one which, in addition to being valid in other respects, involves the essential requirement that it is a voluntary union of one man and one woman for life to the exclusion of all others, which is substantially the definition of marriage given by Lord Penzance in the leading case of Hyde v. Hyde.

No marriage is recognized which is founded on principles which are in conflict with the general morality of Christendom. The term Christendom is used as a matter of convenience only. It includes all those nations generally recognized to be civilized, whatever may be their prevailing religion.

Lex Loci Contractus.—It is a well-established rule that the law of the place where the contract of marriage was concluded, that is, the *lex loci contractus,* or, as it is sometimes termed, the *lex loci celebrationis* (law of the place of celebration), alone governs the court in ascertaining whether or not the marriage is regular. All the formal preliminaries, such as publication of banns, or license, and consent of the parties entitled to give or withhold consent according to the *lex loci contractus,* must be complied with.

Legal Age.—The legal age for marriage in England and Wales is fourteen for a male and twelve for a female. The consent of the father of each of the contracting parties is required of those under twenty-one. If the father is dead the consent of the mother is required unless there is a guardian appointed by the father.

Formal Requirements.—There are certain formal preliminaries to a valid marriage in England, such as the publication of banns, or the procurement of a common or special license which operates as a dispensation with the banns.

Banns.—The banns must be published on three Sundays in the parish in which the parties reside, and if they reside in different parishes the banns must be published in each parish. The marriage ceremony must be celebrated in one of the churches where the banns have been published. If they are published in two different parishes the clergyman of one parish must give a certificate of publication, which must be delivered to the clergyman who solemnizes the marriage.

The parties must reside in the parish for fifteen days prior to the publication of the banns, and the marriage must take place within three months of the last publication. Where a man has procured the banns to be published in false names, or has concealed his true name, he will not be allowed to annul the marriage on that account only. A party cannot take advantage of his own fraud for the purpose of invalidating a marriage.

License.—No publication of banns is necessary in the case of a marriage under a bishop's license. Licenses may be obtained at the offices of the bishop's registrars, and full information as to procuring a license may be obtained through the local clergy. A license granted by a bishop is only available in his diocese, and one of the parties must

have resided for fifteen days immediately preceding the issue of the license in the parish in which the marriage is to take place. The cost varies in different dioceses, but it is usually between £2 and £3. The Archbishop of Canterbury has power to issue a special license enabling a marriage to be solemnized at any time or place. The cost of this is from £20 to £30, and it can be obtained at the Faculty Office, Doctors' Commons, London, E.C.

CERTIFICATE OF REGISTRAR.—A marriage by the certificate of the registrar of marriages may take place at a Roman Catholic place of worship, a Nonconformist chapel, or at the office of the registrar of marriages. The parties must have resided in the district at least seven days preceding the date of the notice, which must be given to the superintendent registrar, or, if they live in different districts, then notice must be given to the superintendent registrar of each district, and it must be exhibited in his office for twenty-one days. If no valid objection to the marriage is made the superintendent registrar issues his certificate and the marriage may take place within three months. The cost, including certificate, is 9s. 7d.

REGISTRAR'S LICENSE.—A marriage by registrar's license may take place either at his office or at a Roman Catholic or Nonconformist place of worship. Notice must be given by one of the parties to the superintendent registrar of the district in which he or she has resided for at least fifteen days, and he will then issue his license at the expiration of one day. The marriage can then immediately take place, or it may take place any time within three months. The cost is £2 14s. 6d.

No marriage license will be issued to parties, either of whom is under twenty-one years of age, unless one of the parties makes oath that the consent of the proper persons has been obtained, or

that there is no person alive whose consent would ordinarily be necessary.

A marriage may be legally concluded without a marriage license if banns are duly published.

Hours for Marriage.—Marriages can only be solemnized between 8 a. m. and 3 p. m., except in the case of marriages by special license and Jewish marriages.

False Names.—Where both parties conspire to procure banns to be published in a false name or names or to practise a fraud with the object of obtaining a license the marriage may be annulled, but if the one party only is guilty the marriage will be valid.

Marriage by Reputation.—In most cases it is necessary to produce clear evidence of a marriage ceremony, but in some exceptional instances a marriage may be proved by long reputation—*e. g.*, if two persons have lived together as man and wife for many years, and if they have always been regarded as such by their friends and neighbours, the Court will presume a legal marriage unless evidence is produced to prove that the parties were not lawfully married.

Certificates of Marriages—Marriage Lines.—A marriage certificate (marriage lines) can be obtained at the time of the marriage for 2s. 7d. If applied for subsequently the cost will be 3s. 7d. A certificate can be obtained at the church, chapel, synagogue or meeting house where the ceremony was performed, or at the General Register Office, Somerset House, or at the office of the superintendent registrar of the district where the marriage took place. The entry in the register at either of these places may be inspected on payment of 1s. A certificate of a marriage entered into in England or Wales prior to July 1, 1837,

should be obtainable either from the registrar general or from the church where it was solemnized.

IMPEDIMENTS—PROHIBITED DEGREES.

A man may not marry his:

1 Grandmother.
2 Grandfather's Wife.
3 Wife's Grandmother.
4—5 Father's Sister, Mother's Sister (*i. e.*, aunt by blood).
6—7 Father's Brother's Wife, Mother's Brother's Wife (Uncle's Wife, *i. e.*, aunt by affinity).
8—9 Wife's Father's Sister, Wife's Mother's Sister (Wife's Aunt).
10 Mother.
11 Stepmother.
12 Wife's Mother (Mother-in-law).
13 Daughter.
14 Wife's Daughter (Stepdaughter).
15 Son's Wife (Daughter-in-law).
16 Sister.
17 Brother's Wife (Sister-in-law).
18—19 Son's Daughter, Daughter's Daughter, (Granddaughter).
20 Son's Son's Wife (Son's Daughter-in-law).
21 Daughter's Son's Wife (Daughter's Daughter-in-law).
22 Wife's Son's Daughter (Stepson's Daughter).
23 Wife's Daughter's Daughter Stepdaughter's Daughter).
24—25 Brother's Daughter, Sister's Daughter (niece).
26—27 Brother's Son's Wife, Sister's Son's Wife (nephew's wife).
28—29 Wife's Brother's Daughter, Wife's Sister's Daughter (niece by affinity).

A woman may not marry her:

1 Grandfather.
2 Grandmother's Husband.
3 Husband's Grandfather.
4—5 Father's Brother, Mother's Brother (uncle by blood).
6—7 Father's Sister's Husband, Mother's Sister's Husband, (Aunt's Husband, *i. e.*, uncle by affinity).
8—9 Husband's Father's Brother, Husband's Mother's Brother (husband's uncle).
10 Father.
11 Stepfather.
12 Husband's Father (father-in-law).
13 Son.
14 Husband's Son (stepson).
15 Daughter's Husband (son-in-law).
16 Brother.
17—18 Husband's Brother, Sister's Husband (brother-in-law).
19—20 Son's Son, Daughter's Son (grandson).
21 Son's Daughter's Husband (son's son-in-law).
22 Daughter's Daughter's Husband (daughter's son-in-law).
23 Husband's Son's Son (stepson's son).
24 Husband's Daughter's Son (stepdaughter's son).
25—26 Brother's Son, Sister's Son (nephew).
27—28 Brother's Daughter's Husband, Sister's Daughter's Husband (niece's husband).
29—30 Husband's Brother's Son, Husband's Sister's Son (nephew by affinity).

GROUNDS OR CAUSES FOR DIVORCE.—A husband is entitled to a divorce if his wife has committed adultery, but a wife is not so entitled unless her husband has committed incestuous adultery, bigamy, rape, sodomy, bestiality, adultery coupled with cruelty, or adultery coupled with desertion without reasonable excuse for two years or more. Incestuous adultery is adultery with a woman within the prohibited degrees.

A wife will not be granted a decree of divorce on the ground of her husband's adultery coupled with cruelty unless the cruelty relied on consists of bodily hurt or injury to health, or a reasonable danger or apprehension of one or the other of them. There must be at least two acts of cruelty on the part of the husband.

The communication of venereal disease when the husband knows of his condition is an act of cruelty.

PROCEDURE.—The application for a divorce is made by a petition to the Probate, Divorce and Admiralty Division of the High Court of Justice.

The party seeking relief is called the petitioner, and the party against whom the petition is brought is called the respondent. The party with whom a husband alleges his wife has committed adultery is called the co-respondent. The person with whom a wife alleges her husband has committed adultery is not a party to the suit. However, a woman implicated in a divorce suit may, upon proper application, secure an order permitting her to attend the proceedings as an intervener.

Divorce proceedings in England are very expensive; the costs in an ordinary uncontested suit amount to from thirty to forty pounds sterling.

A petitioner or respondent who is not worth twenty-five pounds after payment of his or her debts, exclusive of wearing apparel, may sue or

defend in *forma pauperis.* A person whose income exceeds one pound a week cannot, except in special cases, sue or defend in *forma pauperis.* A party desiring to sue or defend in *forma pauperis* must as a preliminary measure prepare a written statement of his or her case, setting forth the facts relied upon as a cause of action or defence, and obtain thereon an endorsed opinion of a barrister-at-law setting forth his professional opinion that the cause of action or defence as stated is good in law. The applicant must then make an affidavit, attaching the statement and the barrister's opinion. This affidavit is then filed in the Divorce Registry of Somerset House, where two days later, if a proper case is made out, an order is issued granting the applicant leave to sue or defend in *forma pauperis.* No fees are charged in respect to this application nor upon the subsequent proceedings in court. No solicitor or barrister is assigned to the party proceeding in this form.

JURISDICTION.—The Court will only entertain jurisdiction when the husband is domiciled in England. If the husband is temporarily residing abroad an action by him or his wife for divorce must be instituted in England.

The English Courts do not recognize a change of domicile which is obtained simply to enable the parties to obtain a divorce in another country, the laws of which offer greater facilities.

If the domicile of the husband is in England, and either the husband or the wife obtains a decree of divorce in the United States of America or elsewhere, the English courts will treat such a divorce as a nullity. A person's domicile is his or her permanent home. An Englishman who lives in America for twenty-five years is not domiciled there unless by all the facts his conduct shows that he has abandoned his English domicile.

CONDONATION.—A matrimonial offence which is a sufficient cause for divorce may be condoned or forgiven by the spouse aggrieved, and such condonation is a good defence to the action. But subsequent misconduct will revive the offence as if there had been no condonation.

CONNIVANCE.—It is a sufficient defence to an action for divorce for the respondent to show that the adultery complained of was committed by the connivance or active consent of the petitioner.

COLLUSION.—Collusion is the illegal agreement and co-operation between the petitioner and the respondent in a divorce action to obtain a judicial dissolution of the marriage.

FORM OF DIVORCE DECREES.—An English decree of divorce is in the first instance *nisi*, or provisional. If after six months it is unaffected by any intervention by the King's Proctor, or any other person, it can be made absolute upon proper application.

KING'S PROCTOR.—This is the proctor or solicitor representing the Crown in the Probate, Divorce and Admiralty Division of the High Court of Justice in matrimonial causes.

In his official capacity he can only intervene in a divorce suit on the ground of collusion.

Sir James Hannen, discussing the powers of this officer, said in a leading case: "If, then, the information given to the King's Proctor before the decree *nisi* does not rise to a suspicion of collusion, but only brings to his knowledge matters material to the due decision of the case, he is not entitled to take any step, and the direction of the Attorney-General would probably be that he should watch the case to see if these material facts are brought to the notice of the court. If at the trial they should be, there will be no need for the King's Proctor to do anything more, for he would not be

entitled to have the same charges tried over again unless material facts were not brought to the notice of the court.

"If, however, those material facts are not so brought to the notice of the court by the parties, he will then be entitled as one of the public, but still acting under the direction of the Attorney-General, to show cause against the decree being made absolute."

In special cases the court has power to make the decree absolute before the expiration of six months after the decree *nisi*.

Until the decree is made absolute neither party can lawfully contract another marriage; and in the event of the suit being contested the parties must further wait until the time for an appeal has passed.

ALIMONY, TEMPORARY AND PERMANENT.—During the pendency of the suit the husband is liable to provide his wife with alimony or maintenance. The amount granted is within the court's discretion, but generally it is about twenty-five per centum of the husband's income. Upon the granting of a decree in the wife's favour the court has power to grant the wife permanent alimony, the amount of which depends on all the facts, such as the husband's income, the wife's means and the social status of the parties. If a wife secures an order for alimony against her husband, he being a man of property, the court may require him to give security for its payment or direct him to make a transfer of money to a trustee or trustees for the convenient payment to the wife. Permanent alimony is usually smaller than temporary alimony, or alimony *pendente lite*, but no rule as to the amount can be safely stated, it resting in the discretion of the Court.

If a husband has no considerable property he

will be directed to pay the alimony awarded against him in monthly or weekly instalments.

INSANITY.—Insanity is neither a cause nor a bar to divorce. If an insane wife commits adultery, or if an insane husband commits adultery coupled with the other offences which make out a cause of action against him, the innocent party is entitled to a decree of divorce. So an insane party may be a petitioner for divorce, but can only appear by his or her committee in lunacy.

HUSBAND'S NAME.—A divorced wife is entitled to continue to use her former husband's surname.

ANNULMENT OF MARRIAGE.—An action for the annulment of marriage has for its purpose the setting aside of the marriage contract on the theory that proper consent to the marriage has never been given by both the parties.

The following are the causes or grounds for such annulment:

1. A prior and existing marriage of one of the parties;

2. Impotency, or such physical malformation of one of the parties which prevents him or her from consummating the marriage by sexual intercourse;

3. Relationship within the prohibited degrees;

4. Marriage procured by fraud, violence or mistake;

5. Insanity of one of the parties at the time of the marriage;

6. Marriage performed without legal license, or without the required publication of banns.

JUDICIAL SEPARATION.—By the Matrimonial Causes Act a decree of judicial separation, which is equivalent in effect to a divorce *a mensa et thoro* under the old law, may be obtained either by the husband or wife on the ground of adultery, or cruelty, or desertion without legal cause for two years and upwards.

The defences which may be set up by the respondent vary according to the cause relied upon by the petitioner, but there is one absolute bar in suits for judicial separations brought on any ground, and that is that the petitioner has committed adultery since the date of the marriage.

SEPARATION ORDERS.—Besides the ordinary suit to obtain a judicial separation which must be prosecuted in the High Court a wife can obtain speedy and inexpensive relief by making an application to a police magistrate, or a board of magistrates, for a separation order. This remedy is limited to married women whose husbands are domiciled in England or Wales.

Such separation orders are intended to furnish summary relief to the wives of workingmen, and the amount awarded for the wife's support to be paid by her husband cannot exceed two pounds a week, no matter what the husband's income may be.

The following are the causes for which, upon application, a magistrate or board of magistrates is authorized to grant a separation order:

1. Habitual drunkenness of the husband, which renders him at times dangerous to himself or others, or incapable of managing himself or his affairs;

2. When the husband has been convicted of an aggravated assault upon his wife, or has been convicted by an Assize or Quarter Sessions Court of an assault and has been sentenced to a fine of more than five pounds or to imprisonment for more than two months;

3. Desertion by the husband of his wife;

4. Persistent cruelty of the husband toward his wife;

5. Neglect to provide reasonable maintenance for wife or infant children.

By the Licensing Act of 1902 a husband is en-

titled to a separation order by a magistrate or board of magistrates if his wife is an habitual drunkard.

Restitution of Conjugal Rights.—Husbands and wives are entitled to each other's society, and if, without sufficient reason, either of them neglects to perform his or her obligations the injured party may institute what is known as a suit for restitution of conjugal rights, in which the court will grant a decree directing the offending party to render conjugal rights to the other party. If the decree is not complied with, such non-compliance is equivalent to desertion, and a suit for judicial separation may be instituted immediately. If the husband is the offending party, and if he has been guilty of adultery, a suit for divorce may at once be instituted; or if he commits adultery subsequently to the date of the decree for restitution, proceedings for divorce may be taken. Furthermore, if the suit for restitution is brought by the wife, the husband may be directed to make such periodical payments for her benefit as the court may think just. If the suit for restitution is brought by the husband, and if the wife is entitled to any property, the court may order a settlement for the whole or part of it for the benefit of the husband and children of the marriage, or either or any of them, or may order the wife to pay a portion of her earnings to the husband for his own benefit, or to some other person for the benefit of the children of the marriage. A husband cannot compel his wife to live with him by force, and if he seizes and retains possession of her, she or her relatives can obtain a *habeas corpus* to compel him to release her, but persons who wrongfully induce a wife to leave her husband, or who detain her from his society by improper means, are liable to an action for damages by him. If a husband

declines to live with his wife because he discovers that she has been unchaste before marriage she cannot obtain a decree for restitution of conjugal rights unless he knew of the fact before the marriage took place. If a husband has been guilty of cruelty he cannot obtain a decree for restitution.

Foreign Marriages.—The Foreign Marriage Act of 1892 (55 and 56 Vict. c. 23) forms a complete code upon the subject of the marriage of British subjects abroad.

Its chief requirement is that one at least of the parties to the marriage must be a British subject.

Notice of the proposed marriage must be given fourteen days before the ceremony, and it must be performed before one of the following officials, who is termed in the Act a "marriage officer": the British ambassador, minister or chargé-d'affaires, accredited to the country where the marriage takes place; the British consul, governor, high commissioner, or official resident. The term consul in the Act includes a consul-general, a vice-consul, pro-consul, or consular agent.

If the woman is a British subject, and the man is a subject or citizen of another country, the marriage officer must be satisfied that the intended marriage would be recognized by the laws of the country where the man to be married belongs.

In 1896 there was passed the Marriage with Foreigners Act (6 Edw. 7, 3. 40), which is intended to protect British subjects who contract marriages with subjects or citizens of other countries, either at home or abroad, and to run the risk of having their marriages treated as invalid by the law of the country of the foreign contracting party. It provides for the granting of certificates by competent authority in the country to which the foreign party to the marriage owes allegiance, stating that

there is no lawful impediment to the proposed marriage.

Conflict of Laws.—English courts do not recognize a decree of divorce granted by the courts of a foreign country as having any effect outside of the country where granted, unless at the time of the beginning of the action which resulted in the decree both parties were domiciled within the jurisdiction of the court which granted it.

This rule applies to divorce decrees obtained in Scotland because for all the purposes of private international law Scotland is a foreign country.

The English courts will, however, recognize as possessing extra-territorial validity a decree of divorce which is recognized as valid by the courts of the country where the parties were actually domiciled at the time of its being granted.

In the case of Gillig v. Gillig, decided in 1906, the English High Court recognized as valid in England a divorce granted in South Dakota, U. S. A., of parties domiciled in New York, because the decree in question was recognized as valid by the courts of the State of New York. It is the doctrine of English courts that an honest adherence to the principle that domicile alone gives jurisdiction in a divorce action will preclude the scandal which arises when a man and woman are held to be husband and wife in one country and strangers in another.

CHAPTER III.

SCOTLAND.

The Act of Union between England and Scotland, A. D. 1707 (6 Anne, c. 2), which made one legislature, the present British Parliament, for the two countries, expressly provided that the existing law and judicial procedure of each kingdom should be continued, except so far as they might be repealed by the Act, or by subsequent legislation. The foundation of Scottish jurisprudence is the Roman law, and the canon law which is derived from it, consequently the law of marriage and divorce in Scotland differs from that of England. The status of marriage by Scottish law may be created in any one of three ways: First, by regular or public marriage celebrated in a church or private house by a minister of religion; second, by an irregular or clandestine marriage entered into without the assistance of a clergyman or any other third party, and, third, by declaration, or declarator, wherein the parties make a declaration confessing an irregular union, and are fined for the "offence," and obtain an extract of the "sentence" which answers to the purpose of a certificate of marriage.

The Scottish definition of marriage is given by Lord Penzance as follows: "The voluntary union of one man and one woman to the exclusion of all others."

IMPEDIMENTS.—Males under fourteen and females under twelve cannot marry, but if persons under age, called in the Scottish law "pupils," live together and continue to do so after both have passed their nonage they are considered married, on the

ground that there is evidence of a contract after the impediment has ceased to exist.

INSANITY.—An insane person cannot give a valid consent and therefore the insanity of either party is an impediment.

INTOXICATION.—There can be no marriage if one of the parties at the time of the formal union was so intoxicated as to be bereft of reason, but a marriage voidable on the ground of either insanity or intoxication may be validated by the consent of both parties after a return to sanity or sobriety.

CONSANGUINITY AND AFFINITY.—As to the impediments which arise from blood and marriage, the 18th Chapter of the Book of Leviticus is practically the law of Scotland. Marriage is forbidden between ascendants and descendants *ad infinitum,* and in the collateral line between brothers and sisters, consanguinian or uterine, and between all collaterals, one of whom stands in *loco parentis* to the other. It is still an academic question whether or not the marriage of a brother and sister both born illegitimate is prohibited.

Of course, a previous marriage still subsisting is an impediment.

GRETNA GREEN MARRIAGES.—In order to put a stop to the Gretna Green marriages which have furnished material for much romance in books and much sorrow in actual life, it was enacted by 19 and 20 Vict., c. 96, that "no irregular marriage contracted in Scotland by declaration, acknowledgment or ceremony (after 31 Dec., 1856) shall be valid unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage."

It is manifest from all the decisions that in the absence of impediments, marriage in Scotland is constituted by interchange of consent. No for-

mal expression of such consent is necessary. If the court is satisfied, from the whole circumstances and the conduct of the parties before and after, that they have given genuine consent to present marriage, it will be held that the marriage has been validly constituted.

HUSBAND AND WIFE.—By the common law of Scotland the legal status of a married woman is so merged in that of her husband as to leave her incapable of independent legal action. Recent legislation has, however, modified this doctrine.

DIVORCE.—The term divorce as used in this chapter means an absolute dissolution and setting aside of a legal marriage.

The Scottish courts recognize two grounds for divorce, adultery and desertion. These grounds are open to either husband or wife. The action can only be maintained by the innocent party.

ADULTERY.—The evidence must be such as would "lead the guarded discretion of a reasonable and just man to the conclusion that adultery has been committed."

If the court has jurisdiction it does not matter that the offence was committed out of Scotland.

DEFENCES.—Besides the denial of the allegation of adultery, the following are sufficient defences: 1, collusion; 2, condonation; 3, long delay in bringing the action; 4, connivance or lenocinium of the plaintiff, who is called a pursuer in Scottish procedure; 5, the honest belief that the intercourse alleged to be adultery was lawful, as when a wife enters into a second marriage in the reasonable belief that her first husband is dead.

DESERTION.—Desertion or, as the Scottish lawyers put it, "non-adherence," for a period of four years, against the will of the party deserted, is the second ground for divorce. Mere separation, as, for example, the absence of the husband on

necessary business or his imprisonment, is not such non-adherence as will entitle the pursuer to a decree. The desertion must be a deliberate and obstinate withdrawal from cohabitation and companionship. If a wife refused to accompany her husband abroad, and he went alone, her refusal, and not his going away, would constitute desertion.

Foreign Divorce.—If a native of Scotland acquires a foreign domicile, and obtains a divorce while abroad, the divorce would be recognized in Scotland if granted for either of the two causes sufficient by Scottish law.

Effects of Divorce.—The judgment of divorce completely sets aside the marriage, and both parties are free to marry again. On divorce the innocent party also comes into the immediate enjoyment of all the rights in the estate of the guilty spouse, or the funds settled by the marriage contract, as if the offending party had died at the date of the decree.

Conversely, the guilty spouse loses all claim to such legal rights as he or she would have had on the death of the innocent party but for the divorce.

CHAPTER IV.

IRELAND.

Ireland like Scotland has its separate judicial system, and many of its laws differ from those of all other parts of the British Empire.

The Irish law relating to marriage and matrimonial controversies is administered under the Matrimonial Causes and Marriage Law (Ireland) Amendment Act of 1870. It is practically the same as the English law as it existed before 1857.

The Irish Act of 1870 transferred the exercise by the Ecclesiastical Courts prior to the disestablishment of the Church of Ireland to a court for matrimonial causes and assigned the trial of such causes to the judge of the Court of Probate.

Under the Irish Judicature Act of 1877 this jurisdiction is now vested in the Supreme Court of Judicature and is exercised by the probate and matrimonial judge.

It is impossible to obtain a decree of divorce from the bonds of matrimony in the courts of Ireland. The only divorce decree granted is from bed and board, and amounts in effect to what is termed a judicial separation in England.

The grounds for the limited form of divorce granted by the courts are adultery, cruelty or unnatural practices.

In order to obtain a decree of complete divorce the petitioner must promote a bill in the House of Lords to dissolve the marriage and allow the petitioner to marry again, which bill must be founded upon and follow a divorce from bed and board obtained in the Irish courts.

When a petition is presented to the House of

Lords a wife must prove her husband's adultery coupled with cruelty and a husband must prove his wife's adultery and must, if possible, make his wife's paramour a party by instituting proceedings against him for criminal conversation in the Irish courts.

NULLITY.—An action for nullity of marriage can be maintained on the following grounds: 1. Impuberty. 2. Relationship of the parties within the prohibited degrees. 3. An existing prior marriage of one of the parties. 4. Incapacity of the parties to conclude the marriage contract, as in the event of one being a lunatic. 5. Non-compliance with marriage laws. 6. Fraud in procuring the marriage. 7. Impotency.

CHAPTER V.

The French Law of Marriage and Divorce.

Marriage.—A man cannot contract a marriage before he has completed his eighteenth year and a woman until she has completed her fifteenth year. However, the President of the Republic may grant a dispensation as to age upon good cause appearing.

A son who has not reached the age of twenty-five, or a daughter who has not reached the age of twenty-one, cannot marry without the consent of their parents; but if the parents disagree between themselves the consent of the father is sufficient.

If both the father and the mother are dead or unable to give consent the grandparents take their place.

Sons or daughters less than twenty-one years of age, who have no parents or grandparents, or only such as are in a condition which renders them incapable of giving consent, cannot marry without the consent of a family council.

Impediments.—Marriage is prohibited between all legitimate ascendants and descendants in the direct line and between persons who are connected by marriage and related in the same degree. Marriage is also prohibited between uncle and niece and aunt and nephew. The President of the Republic may, nevertheless, on good cause being shown, dispense with the prohibitions contained in the Civil Code forbidding the marriage of a brother-in-law with a sister-in-law, and the marriage between uncle and niece, and aunt and nephew.

Formalities.—A marriage must be celebrated publicly before the civil status officer of the civil

domicile of one of the parties. The officer of the civil status before celebrating a marriage must publish the banns twice before the door of the Maison Commune, at an interval of eight days. The President of the Republic, and also the official whom he entrusts with this power, may dispense, for good cause, with the second publication of the banns.

Foreign Marriages.—A marriage celebrated in a foreign country between French citizens or between a French citizen and a foreigner is valid if it is performed according to the forms customary in such country, provided always that the marriage has been preceded by the publications of the banns pursuant to the code.

The record of a marriage contracted in a foreign country must be transcribed within three months of the return of the French citizen to the territory of the Republic in the public marriage registers of his civil domicile.

Voidable Marriages.—The validity of a marriage which has been contracted without the free consent of both parties, or without the free consent of one of them, can only be impugned by the parties themselves or by the party whose consent was not freely given.

When there has been an honest mistake as to the personality of one of the parties the validity of the marriage can only be impugned by the person who was misled.

Such mistakes as to personality include mistakes as to quality as well as to identity. For example, the Court of Cassation held in 1861 that where a woman had been misled into marrying an ex-convict by ignorance of the fact, the marriage was annulable.

An action for a declaration of nullity of marriage for any cause cannot be maintained by parties

to the marriage, or by the relations whose consent was necessary, when such marriage has been ratified or confirmed knowingly by those whose consent was necessary, or after a year has passed since they acquired knowledge of the cause for an action without any application to the courts for relief.

Every marriage which has not been contracted publicly, and has not been celebrated before a competent public official, can be impugned by the parties themselves, by their fathers and mothers, by the ascendants, and by all who have an existing vested interest, as well as by the Public Prosecutor.

No one can legally claim the status of husband or wife, or the effects and privileges resulting by law from marriage, without the production of a certificate of the marriage celebration, except in the cases provided for by Article 46 of the code, namely, when no records have ever existed, or the same have been lost or destroyed. In such cases the marriage may be established by oral evidence.

The fact that by common repute the parties are married does not dispense with the necessity of producing the record of the celebration.

However, if there are children born of two persons who have lived openly as husband and wife, and who are both dead, the legitimacy of their children cannot be assailed on the sole ground that a record of their parents' marriage is not produced.

A marriage which has been declared a nullity has, if contracted in good faith, the civil effects of a marriage so far as the parties themselves and their children are concerned. If only one of the parties has acted in good faith the legal consequences of marriage only exist in favour of the innocent party and of the children of the marriage.

The last two paragraphs, which are virtually a

translation of Articles 201 and 202 of the Civil Code, are very important to foreigners who marry French citizens.

Until a court has pronounced the marriage a nullity the marriage between a French citizen and a foreigner celebrated abroad is binding upon the parties, even though the exacting forms required by the French law have not been complied with.

If an Englishwoman in good faith marries a Frenchman in London she is entitled by French law to the civil rights of a wife, and her children the issue of the marriage would be considered legitimate, although the marriage had not been celebrated after the publication of banns in the manner prescribed by the code; or the record of such celebration transcribed within three months of the return of the French husband to France. The foreign wife would have the same rights even if she married a Frenchman under twenty-five years of age without the previous consent of his parents.

Of course, such a marriage could be declared null, leaving both parties free to marry again.

It must be always carried in mind that to constitute a valid marriage under French law which cannot be impugned by anyone all the statutory conditions imposed by the Civil Code must be complied with.

Husband and Wife.—Married persons owe each other fidelity, support and assistance. A husband owes protection to his wife. A wife owes obedience to her husband.

A wife is obliged to live with her husband and to follow him wherever he determines it proper to reside. A husband is obliged to receive his wife and to provide her with all that is necessary for the requirements of life, according to his means and condition.

A wife cannot bring a civil action without the

consent of her husband, even if she is a public trader and is not married under the system of a community of goods and has separate property.

A wife cannot give away, convey, mortgage or acquire property, with or without a consideration, without her husband concurring in the document by which such transfer is made, or giving his written consent.

A woman cannot become a public trader without her husband's consent. It is not necessary for a wife to have her husband's consent to make a will.

MARRIAGE DUTIES.—The husband and wife are mutually bound to feed, support and educate their children.

Children are bound to support their parents and other ascendants who are in want.

DISSOLUTION OF MARRIAGE.—A marriage is dissolved:

a. By the death of one of the parties;

b. By a divorce pronounced according to law.

SECOND MARRIAGES.—A woman cannot legally marry again until ten months have elapsed since the dissolution of her previous marriage.

DIVORCE

CAUSES FOR DIVORCE.—

1. Either party to the marriage is entitled to a divorce on the ground of the adultery of the other.

2. Either party is entitled to a divorce because of the cruelty or serious insults of the one toward the other. This includes not only such violent cruelty as endangers life, but all sorts of less serious assaults. Any acts, words or writings by which one of the parties reflects on the honour and good name of the other furnish cause for a divorce.

3. The fact that one of the parties has been sentenced to death, imprisonment, penal servitude, transportation, banishment or loss of civil rights, and is branded with infamy, entitles the other party to a divorce.

That article of the Civil Code which provided for divorce by mutual consent, owing to incompatibility of temper, has been repealed.

DIVORCE PROCEDURE.—A party who wishes to institute a proceeding for divorce must present the petition personally to the President of the Court or to the judge who is acting in that capacity. If it appears that the petitioner is unable to attend in person the President of the Court or the judge acting as such is required to go, accompanied by his registrar, to the residence of the petitioner.

The judge, upon seeing and hearing the petitioner and after having made such comment as he may deem proper, will affix his order to the end of the petition, directing the parties to appear before him on a day and at the hour then fixed, and will direct an officer to serve the citation upon the defendant.

It is within the judge's discretion to grant leave in the same order to the petitioner to reside separate during the pendency of the action from the defendant. If the petitioner be a wife, the judge may fix the place of her temporary residence.

The next step is that upon the day appointed in the citation the judge hears the parties in person. Upon such hearing it is the duty of the judge to do his best to conciliate the parties. In case the parties refuse to be conciliated, or the defendant defaults in appearance, the judge then grants an order certifying to the fact and giving the petitioner leave to issue a citation requiring the defendant to appear in court.

The judge has authority under the code to

make such a provisional order respecting the payment to a wife of alimony during the action or concerning the temporary custody of the children as may be necessary and proper.

The case is prepared, investigated and judged in the ordinary form, the Ministère Public being heard. The Ministère Public is an official who performs similar duties to those of a King's Proctor in England.

The petitioner can at any stage of the case change the petition for a divorce into a petition for a judicial separation.

NEWSPAPER REPORTS.—The public press is forbidden under penalty of a fine of from 100 to 2,000 francs to publish the evidence in divorce trials.

EFFECTS OF DIVORCE.—Parties who have been divorced cannot become husband and wife again if either of them, after the divorce, have contracted a new marriage since the divorce and been divorced a second time.

If parties who have been divorced wish to become husband and wife again a new marriage is necessary. After such a remarriage no new petition for divorce can be entertained for any cause, except that one of the parties since the remarriage has been sentenced to a punishment which involves corporal detention and is branded with infamy.

A divorced woman cannot remarry until ten months after the divorce has become absolute.

Where the divorce has been granted on the ground of adultery the guilty party can never marry the person with whom he or she was found guilty of the offence.

CUSTODY OF CHILDREN.—The custody of the children belongs to the party in whose favour the judgment of divorce has been pronounced, unless the court in the interests of the children, upon

the application of the family or the Ministère Public, directs that they be entrusted to the other party or to a third person.

Whoever may become entitled to the children's custody, the father and mother each retain their right to superintend the maintenance and education of their children and must contribute thereto in proportion to their means.

JUDICIAL SEPARATION.—The same causes which are sufficient to obtain a decree of divorce are sufficient to entitle the party to a separation from bed and board.

When a judicial separation has lasted three years the judgment can be changed into a decree of divorce upon the application of either party.

A judicial separation carries with it separation of property and restores to a woman her full civil rights, so that she may buy and sell and otherwise act as if she were a single woman.

CHAPTER VI.

ITALY.

MARRIAGE.—Marriage in Italy is governed in practically all its aspects and connections by the regulations contained in the chapter on marriage in the Italian Civil Code (*Il Codice Civile del regno d'Italia*), which went into effect in 1866. These regulations are for the most part the same as those of the French Code, upon which the Italian Code was directly based, the modifications in the Italian Code being mainly in the direction of greater specificness and greater stringency.

As in France, civil marriage is the only form of marriage recognized by the State.

IMPEDIMENTS.—1. Age. A man may not contract marriage before completing his eighteenth year or a woman before completing her fifteenth. The King may, however, grant a dispensation permitting a man to marry after attaining the age of fourteen and a woman after attaining the age of twelve.

2. Existing previous marriage. As in France.

3. Period of delay. A woman cannot contract a new marriage until ten months after the dissolution or annulment of a former marriage, unless the marriage was annulled on the ground of impotence. But this prohibition ceases from the day the woman has given birth to a child.

4. Consanguinity and affinity. As in France. The King has a right of dispensation similar to that possessed by the President in France.

5. Relationship by adoption. As in France.

6. Mental incapacity. Marriage may not be contracted by one who has been legally adjudged

of unsound mind. If an action on this ground is pending against either party to a contemplated marriage the marriage must be suspended until final judgment is given.

7. Homicide. A person who has been legally convicted as a principal or accomplice in a voluntary homicide committed or attempted upon any person may not be married to the latter's consort. As in the case of the preceding impediment, a contemplated marriage must be suspended if an action on this ground is pending against either party.

8. Consent of parents. The age under which the consent of parents or next of kin is required is 25 for males and 21 for females. An adopted child requires the consent of both its natural and adopted parents. If the consent is refused the Italian Code provides for an appeal to the court.

Foreigners desiring to be married in Italy must present a certificate from the competent authority of their own country that they satisfy the requirements of the laws of that country. Foreigners ordinarily residing in Italy must also satisfy the requirements of the Italian law.

Preliminaries.—The preliminary formalities to marriage are essentially the same in both the French and the Italian Codes.

Legal Opposition.—Legal opposition to the marriage may be made by the parents or, in want of them, by the grandparents of either party, if they are cognizant of the existence of any legal impediment, even if the parties are of age. In default of ascendants, opposition can also be made by a brother, sister, uncle, aunt, or cousin german, as well as by the guardian or curator duly authorized by the family council, on the ground of lack of the required consent or the infirmity of mind of one of the parties to the marriage. Anyone

may oppose the remarriage of his former consort.

The public prosecutor is required to oppose the marriage officially when he is cognizant of any impediment, and to facilitate his accomplishment of this duty the registrar is bound to inform him of any impediment that appears to exist.

The effect of a legal opposition is to suspend the celebration of the marriage until the case has been determined in court. If the opposition proves to be without legal ground the one filing it, unless one of the ascendants or the public prosecutor, may be held responsible for any damage occasioned by him.

CELEBRATION.—Marriage must be celebrated publicly in the communal house and before the registrar of the commune where one of the parties has his or her domicile. Two witnesses are required.

RECORD OF MARRIAGE.—The registrar must inscribe a record of the marriage in the civil register giving all the necessary details and must deliver an authenticated abstract of the record to the parties, who without this cannot legally claim to be married or to enjoy any of the legal consequences of marriage.

ILLEGITIMATE CHILDREN.—Such children are legitimatized by the subsequent marriage of their parents, although in order to acquire the legal rights of legitimate children they must be formally recognized by their parents.

These legal rights are acquired at the time of marriage only if the illegitimate children are legally recognized by their parents in the marriage record or have been legally recognized at some time prior to the marriage; otherwise they date only from the day when such recognition is given subsequent to the marriage. Children of adulterous connections and of persons between

whom exists the impediment of relationship by blood or marriage in the direct line, or of relationship by blood in the collateral line up to the second degree, cannot be legitimatized.

FOREIGN MARRIAGES.—In order that marriage may be valid in Italy an Italian citizen entering into a marriage in a foreign country must be free to marry under the Italian law and must make publication in the commune in Italy of which he is a resident, or if he is no longer a resident of Italy, in the one in which he last resided. The marriage is valid if celebrated according to the form prescribed by the laws of the country in which it takes place. Within three months after his return to Italy he must have the marriage recorded in the civil register of the commune where he permanently resides.

ANNULMENT.—Marriage may be annulled if contracted in contravention of the impediments as to age, existing previous marriage, relationship or homicide. It may also be declared null if it was celebrated before an incompetent official or without the necessary witnesses; in the former case, however, the action cannot be instituted more than a year after the date of celebration. Actions on the foregoing grounds may be brought by the parties themselves, by the nearest ascendants, by the public prosecutor or by any one who has a legitimate or actual interest in the marriage.

The validity of a marriage may also be attacked by the party whose consent thereto was not free or who was under error as to the person married; but actions on these grounds are no longer admissible when cohabitation has lasted for a month after the removal of the constraint or the discovery of the error. Impotence, when anterior to marriage, may be put forward as a ground for annulment by either party. Marriage performed without

the required legal consent may be attacked by the person whose consent was necessary or by the party to whom it was necessary; but in the former case it cannot be attacked later than six months after marriage, and in the latter, six months after the party in question has attained his majority. Moreover, in cases where only one of the parties has attained the required age it cannot be attacked when the wife, although not yet of age, has become pregnant. The marriage of one who has been legally adjudged of unsound mind can be attacked either by the party himself, his guardian, the family council, or the public prosecutor, if the judgment had already been passed when the marriage was celebrated, or if the infirmity for which the judgment was pronounced was existent at the time of marriage.

Marriage cannot, however, be attacked on this ground if cohabitation has endured for three months after the party has been legally adjudged to be once more of sound mind.

The public prosecutor is obliged to intervene in all matrimonial causes, even if they were not instituted by him.

SEPARATION.—There is no divorce in Italy, and marriage is only dissolved by the death of one of the parties. Personal separation is, however, permitted on the following grounds:

1. Adultery of the wife, or of the husband if he maintains a concubine in his house or openly in another place or when such circumstances concur that the act constitutes a grave indignity (*ingiuria grave*) to the wife. The latter provision is intended to apply particularly to cases where the wife has discovered the husband in *flagrante delicto.*

2. Voluntary abandonment.

3. Violence endangering the life or health, cruelty, threats, or grave mental indignities.

4. Sentence to punishment for crime, except when the conviction was prior to the marriage and the other party was cognizant of it.

5. The wife can ask for a separation when the husband, without any just reason, does not set up an abode, or, having the means, refuses to set one up in a manner suited to his condition.

6. Mutual agreement. Separation on this ground is not valid unless ratified by the court after an attempt at reconciliation has been made.

LIMITATIONS TO RIGHT OF ACTION.—The right to obtain a separation is extinguished by condonation, express or tacit.

PROCEDURE.—Actions for separations must be brought before the court under whose jurisdiction the defendant is resident or domiciled. Service is ordinarily personal, but if the residence of the defendant is unknown it may be made by a judicial edict giving notice of the action, of which one copy must be posted at the door of the building where the court holds its sessions, while a copy is published in the newspaper designated for the official notices of the court, and another copy is transmitted to the public prosecutor for the district in which the action is brought.

Before the case is tried the parties are obliged to appear in person and without attorneys before the President of the Court which has jurisdiction over the case, who hears each party separately and makes such representations as he considers calculated to effect a reconciliation. If a reconciliation is accomplished the fact is noted on the court records and the case dismissed; otherwise the case is sent back to the court for trial.

The trial is ordinarily in accordance with the rules of summary procedure.

EFFECTS OF DECREE.—The party for whose fault the separation was pronounced incurs the loss of the marriage remainders; of all the uses which the other party had granted in the marriage contract, and also of the legal usufruct. The other party preserves the right to the remainders and to every other use dependent on the marriage contract, even if stipulated as reciprocal. In case both parties are equally at fault each incurs the losses above indicated, the right of support in case of necessity always being preserved.

CUSTODY OF CHILDREN.—The tribunal which pronounces the separation also orders which of the parties shall retain the children. For grave reasons it may commit the children to an educational institution or to the charge of a third party. Whatever the disposition of the children, however, both parents retain the right of supervising their education.

FOREIGN DIVORCES.—Decrees of divorce granted by foreign courts are not recognized in Italy so far as Italian subjects are concerned.

CHAPTER VII.

Belgium.

Requirements for Marriage.—A man who has not completed his eighteenth year and a woman who has not completed her fifteenth year cannot contract marriage.

Nevertheless, it is within the power of the sovereign to grant a dispensation setting aside this requirement for good and sufficient causes.

There can be no marriage in Belgium without mutual consent. It is forbidden to contract a second marriage before the dissolution of the first.

A son or a daughter who has not reached the age of twenty-one years cannot contract a marriage without the consent of his or her father and mother. In case of disagreement between the father and mother on this subject the consent of the father is sufficient.

A disagreement between a father and a mother as to giving consent to the marriage of their child can be established by a notarial record, by a summons served by a process server, by minutes of a hearing held on the subject, or by a letter stating the mother's objection to the marriage written by her to a civil officer of the State.

If the father or the mother is dead, if either of them is absent or incapable of expressing consent, the consent of the other parent is sufficient.

The incapacity of a father or a mother to express consent may be proven by a declaration made by the future spouse whose ascendant is incapable and by four witnesses of full age, of either sex.

If the father and the mother are dead, or both

are incapable of manifesting their wishes, the grandfathers and the grandmothers take their places.

PROHIBITIONS.—In direct line marriage is forbidden between all legitimate or illegitimate ascendants and descendants and their spouses.

In the indirect or collateral line marriage is forbidden between brother and sister, legitimate or illegitimate, and their spouses of the same degree.

Marriage is forbidden between uncle and niece and aunt and nephew.

It is, however, possible for good reasons to obtain a dispensation from the sovereign permitting a marriage within these prohibited degrees.

FORMALITIES.—Marriage must be celebrated publicly before a civil officer of the State of the commune and in the commune where one of the contracting parties has his, or her, residence.

OBJECTIONS BY THIRD PERSONS.—Of course, a husband or wife of an existing marriage has the right to object formally to his or her spouse contracting another marriage.

The father, and, in default of the father, the mother, and, in default of the mother, the grandparents have the right to oppose a marriage of a child or grandchild who has not reached the age of twenty-five years.

ANNULMENT.—A marriage which has been contracted without the free consent of the parties, or one of them, may be annulled in the courts, but only on the application of either of the parties when neither of them have given free consent, or on the application of the party whose free consent was not obtained.

When there has been an error concerning the identity of either of the parties to the contract the

marriage can only be annulled at the instance of the party who has been misled or imposed upon.

A marriage which has been contracted without the consent of the father or mother, the ascendants, or the family council, where such consent was a necessary condition precedent, can only be annulled on the application of the person or persons whose consent was wanting.

A marriage which has been declared null continues in operation, nevertheless, all the civil effects both for the parents and the children, when the contract was concluded in good faith.

OBLIGATIONS OF MARRIAGE.—The parties to a marriage are bound to mutual fidelity, protection and assistance.

The husband owes protection to his wife and a wife obedience to her husband.

A wife is obliged to live with her husband at whatever residence he may judge to be proper. The husband is obliged to receive his wife and to furnish her with the necessaries of life, according to his ability and social condition.

A husband and wife contract together by the fact of marriage itself to nourish, educate and properly care for their children.

A wife whose property is mixed with that of her husband, or who keeps her property separate, cannot give, sell, pledge, mortgage, or acquire title to property, with or without a valuable consideration, except on the written consent of her husband.

DISSOLUTION OF MARRIAGE.—A marriage is dissolved:

1. By the death of one of the parties;
2. By legal divorce;
3. Abrogation by Article 13 of the Constitution.

SECOND MARRIAGE.—A woman cannot conclude a new marriage until ten months after the dissolution of the one precedent.

DIVORCE.—A husband is entitled to a divorce because of the adultery of his wife.

A wife can only obtain a divorce because of her husband's adultery, when the husband has brought his paramour or concubine into the home he has established for himself and wife.

Either party to a marriage is entitled to a divorce because of excessive ill-usage or grievous bodily injuries committed by one against the other.

The conviction of one of the parties for an infamous offence entitles the other to institute an action for a divorce.

MUTUAL CONSENT.—The mutual and persistent agreement of the parties to be divorced, expressed in the manner provided by law, and after certain formalities and proofs showing that a continuance of the marriage relation is unbearable, and that there exists by agreement of both parties peremptory reasons for a divorcement, is sufficient ground for a decree of divorce. At a meeting of the International Law Association, held at the Guildhall, London, on August 4th, 1910, Dr. Gaston de Leval, legal adviser to the British legation at Brussels, pleaded in favour of the Belgian system of divorce by mutual consent. Extremely few cases, he said, of such divorces took place, the proportion not being more than three per cent. on the average of Belgian divorces. He argued that such a divorce was at least as moral and difficult to obtain as any other kind of divorce, and in most of the cases the most difficult to obtain.

CHAPTER VIII.

SWITZERLAND.

The marriage and divorce laws of the Swiss Republic are federal—that is, operating throughout all the cantons of the confederation. Prior to January 1, 1876, when the present federal law went into effect, the different cantons had individual laws regulating divorce.

QUALIFICATIONS FOR MARRIAGE.—1. Age. A man must be at least eighteen years of age and a woman at least sixteen in order to contract a valid marriage.

2. Mental capacity. Lunatics and idiots are prohibited from marrying.

3. Free consent. No marriage is valid without the free consent of the parties. Duress, fraud or error in the person precludes the presumption of consent.

4. Consent of parents. Parental consent is required of all persons under twenty years of age. If the parents are dead or incapable of manifesting their will the consent of a guardian is necessary. If the guardian refuses consent the parties may appeal from his decision to the courts.

CONSANGUINITY AND AFFINITY.—Marriage is prohibited between ascendants and descendants; between brothers and sisters of the whole or half blood; between uncles and nieces, or aunts and nephews, whether the relationship arises from legitimate or illegitimate birth, and between connections by marriage in the direct line.

Marriage is also prohibited between adopting parents and adopted children.

A widow, a divorced woman, or a woman whose

marriage has been annulled cannot contract a new marriage within 300 days after the dissolution of the former marriage.

When an absolute divorce has been decreed on the ground of adultery, attempt on life, cruelty, dishonourable treatment, sentence to an ignominious punishment, wilful desertion, or incurable mental disease, the guilty or losing party cannot enter into a new marriage until one year has elapsed from the date of the divorce.

PRELIMINARY FORMALITIES.—Before the celebration, publication must be made in the district of birth and residence of both parties. Fourteen days after the formal publication of banns the registrar of the domicile of the intended husband delivers to the parties, provided no valid objection to the marriage has been served at the registrar's office, a certificate of publication, which permits the parties to be married in any place in Switzerland within six months from date of publication.

CELEBRATION.—The marriage ceremony must be performed by a registrar. The civil ceremony must precede any religious celebration. The civil marriage before the registrar must be publicly performed in the presence of not less than two witnesses.

ILLEGITIMATE CHILDREN.—Illegitimate children are legitimatized by the subsequent marriage of their parents.

FOREIGN MARRIAGES.—A marriage contracted in a foreign country that is valid according to the laws of that country is valid in Switzerland.

DIVORCE AND JUDICIAL SEPARATION.—Absolute divorce is granted for the following causes:

1. When both husband and wife consent to a divorcement and it appears to the court from facts presented that to keep the parties bound together

by the marriage bond is incompatible with the true intention of marriage.

2. Adultery. However, six months must not have passed since the injured spouse obtained knowledge of the offence.

3. Attempt upon the life of either spouse.

4. Cruelty or dishonourable treatment.

5. Wilful desertion continued for two years, and the absentee has failed within six months to obey a judicial summons to return.

6. Incurable insanity or mental disease of three years' existence.

7. In the absence of the causes above set forth the courts have still power to grant either an absolute divorce or a judicial separation for not more than two years if it appears that the parties are grossly antagonistic to each other. If, upon petition, a judicial separation is granted and at its stated expiration no reconciliation has taken place, the court will entertain an application for an absolute divorce.

Effects of Divorce.—The questions of property, alimony, custody of children and change of name are determined according to the laws of the individual cantons. Generally the guilty party must pay damages to the innocent spouse, either in one payment or by instalments, the amount depending upon the means of the parties and the nature and degree of the offence for which the divorce was granted.

CHAPTER IX.

German Law.

The German Empire consists of twenty-six political States. These include four kingdoms, six grandduchies, five duchies, seven principalities, three free towns, and Alsace-Lorraine. With the exception of Alsace-Lorraine, whose affairs are administered by the central imperial government, all are sovereign States.

This individual sovereignty of a German State is somewhat analogous to that of a State in the American Union. However, we must for the purposes of this chapter notice one important difference.

The legislative power of the central authority of the German Empire is not only exclusive on certain imperial matters, but its acts take precedence in such domestic concerns as domicile, judicial procedure, marriage and divorce, and the general rights of a German subject.

The Constitution of the Empire (April 16, 1871) enumerates in detail the powers, limitations and relations of the different organs of government.

From the *Germania* of Tacitus and other authorities we learn that among the early Germans marriage was largely a matter of bargain and sale. In the presence of certain relatives or friends the father or guardian of a female delivered her to the bridegroom on receipt of the purchase price.

Marriage by abduction was also recognized, but the abducter was obliged to make compensation to the abducted female's father or guardian, which compensation amounted in effect to an agreed purchase price.

Although the consent of the female was never asked or considered on the question of marriage, we are told by Tacitus that German wives were remarkable for their fidelity and affection and were treated as friends by their husbands, who had a high respect for their judgment in all concerns of life.

From the mediæval times Christianity has exercised a strong and correcting influence on the relation of marriage in Germany. At first the Christian Church recognized the informally declared agreement to marry on the part of the man and woman, which is called nowadays a betrothal, as all that was necessary to make them husband and wife. If the agreement referred to some future time, however, they were not considered as actually married until cohabitation had taken place. By the decrees of the Council of Trent, ratified in 1564, the Roman Catholic Church made it a requirement for the first time that in order to constitute a valid marriage the declarations of the couple must be made before a priest and witnesses.

It was not until the eighteenth century that the Protestant Church in Germany adopted the rule that a marriage is not concluded simply by betrothal or mutual agreement, but requires a formal religious celebration.

The *Personenstandsgesetz,* which became law on January 1, 1876, provided for the first time governmental regulation of marriage on a nonsectarian basis for the German Empire.

It was not, however, until the enactment of the Civil Code that a clear and methodical statement of the law of marriage and divorce was given to the German people.

The German Civil Code (*Bürgerliches Gesetzbuch für das Deutsche Reich*), which became law

on January 1, 1900, has been described by Professor Maitland as "the most carefully considered statement of a nation's law that the world has ever seen." It is in the Fourth Book of this scientific codification, under the general title of Family Law, that we find the German statutes of to-day on marriage and divorce. A summary of these statutes follows:

MARRIAGE.—Religious definitions, dogmas and obligations respecting marriage are not affected or considered by the German Code. Marriage is treated as a civil contract to which the State is always an added party.

A legitimate child requires, before the completion of his twenty-first year, the approval of his father for concluding a marriage; an illegitimate child requires, before reaching maturity, the approval of the mother. A male reaches his majority at twenty-one years of age and a female at the completion of her sixteenth year, for the purpose of marriage.

IMPEDIMENTS TO MARRIAGE.—A marriage cannot be concluded between relatives by blood in the direct line nor between brothers and sisters of full blood or half blood, nor between persons one of whom has had sexual intercourse with the parents, grandparents or descendants of the other.

Persons in the military service, aliens and officials who by the law require special permission to become married cannot conclude a marriage without permission.

FORM OF MARRIAGE.—A marriage is concluded by the parties appearing together and declaring before a registrar, in the presence of two witnesses, their intention to become husband and wife.

VOIDABLE MARRIAGES.—A marriage may be avoided by a spouse who has been induced to enter the marriage status by fraud concerning such facts

as would have deterred him or her from concluding the marriage had he or she been acquainted with the actual state of affairs. A marriage cannot be avoided on the ground of fraud or misrepresentation as to the pecuniary means of either party.

HUSBAND AND WIFE.—The parties are mutually bound to live in conjugal community. The right to decide in all matters affecting the common conjugal life belongs to the husband. However, if the decision of the husband on these matters is an abuse and not a reasonable exercise of his right the wife is not bound to accept his decision.

PROPERTY.—A wife has absolute power to deal with her separate property as if she were a single woman. A wife's separate property includes also that which she has acquired by her industry or in the course of a separate business conducted by her. It is presumed in favour of the husband's creditors that all chattels which are in the possession of either husband or wife, or in their joint possession, belong to the husband. In regard to articles intended exclusively for the personal use of the wife, such as clothing, ornaments and working implements, it is presumed that as between the spouses and the creditors of either that the articles are the property of the wife.

MATRIMONIAL CONTRACTS.—Both spouses may regulate their property relation by a contract made before or after the marriage.

DIVORCE.—Grounds or Causes. Either spouse may petition for divorce on the following grounds:

A. Adultery of the other spouse;

B. An attempt by one spouse to kill the other;

C. Wilful desertion continued for the period of one year;

D. Offences specified in Sections 171 to 175

inclusive, of the Criminal Code, including bigamy, incest and certain detestable crimes;

E. Such a grave breach of marital duty or such dishonest or immoral conduct which disturbs the conjugal relation to such an extent that the petitioner cannot reasonably be expected to continue the relation;

F. Insanity of the respondent continued for three years and of such a character that the intellectual community between the parties has ceased and there is no reasonable hope of its renewal.

Petitions for divorce must be filed within six months of the time when the petitioner acquires knowledge of the facts constituting a sufficient ground.

The petition cannot be allowed in any case if ten years have elapsed since the happening of the cause for divorce. After divorcement both parties are free to remarry.

If a marriage is dissolved for any cause the decree shall declare the respondent to be the exclusive guilty party.

PUNISHMENT FOR THE GUILTY.—Adultery is punishable by imprisonment with labour for a term not exceeding six months in the case of the guilty married person and the partner in guilt if the marriage is dissolved on the ground of adultery. Prosecution only takes place, however, on proposal —that is, at the instance of the aggrieved spouse.

CONDONATION.—The right to a divorce is lost by condonation of the offence relied upon as a cause. If a marriage is dissolved for any cause the decree shall declare the respondents to be the exclusive guilty party.

EFFECTS OF THE DIVORCE.—A divorced wife retains the surname of her husband unless specifically prohibited until she remarries.

If she is the innocent party she may, upon making a declaration before competent authority, resume her maiden name. If she is the guilty party, her husband, by making a declaration before competent authority, may prohibit her calling herself by his surname. After she has thus lost the surname of her husband she, by operation of law, resumes her maiden name.

MAINTENANCE.—A husband declared by a decree of divorce or judicial separation to be the guilty party shall provide maintenance to his divorced wife suitable to her station in life, in so far as she is unable to obtain such maintenance out of her earnings and income.

A wife declared by decree to be the guilty party shall provide maintenance to her divorced husband suitable to his station in life, in so far as he is not able to so maintain himself.

The maintenance above referred to shall be provided by a money annuity payable quarterly and in advance.

In some cases the person bound to provide such maintenance is required to furnish a bond or security for the performance of the duty.

For sufficient reason the person entitled to the payment of such a money annuity may demand a complete settlement in a lump sum.

The duty to provide maintenance is extinguished on the remarriage of the party entitled to it or on the death of the party bound to make such provision.

If a marriage has been dissolved on account of the insanity of one of the parties the same spouse shall provide maintenance to the unfortunate respondent.

If the husband is bound to provide maintenance to a child of the marriage the wife is also

bound to reasonably contribute toward such maintenance out of her income or earnings.

JUDICIAL SEPARATION.—The same causes which are sufficient for a divorce will entitle the petitioner to a judicial separation if that form of relief is preferred. If such a judicial separation has been granted either spouse may apply for a divorce by virtue of the decree for separation, unless the conjugal community has been re-established after the issue of such decree.

CHAPTER X.

Austria-Hungary.

The Austria-Hungary Empire comprises five countries, each bearing the name of kingdom—viz., Hungary, Bohemia, Galicia, Illyria and Dalmatia; one archduchy, Austria; one principality, Transylvania; one duchy, Styria; one margraviate, Moravia, and one county, Tyrol. In this chapter we shall deal with the marriage and divorce laws of Austria, leaving those of Hungary and Transylvania for the following chapter.

The regulations governing the marriage relation in Austria and the other parts of the Empire represented in the Austrian Reichsrath are in general contained in the Austrian Civil Code, which became law on June 1, 1811, supplemented by later statutes, court decrees and ministerial edicts. Perhaps the most curious feature of Austrian law is that an absolute divorce can, for certain causes, be granted when both the parties are non-Catholic, but for Roman Catholics the bond of marriage is dissoluble only by the death of one party.

Definition of Marriage.—The Austrian Code defines marriage as follows: "The foundation of family relations is the marriage contract. In the marriage contract two persons of different sex legally declare their intention to live in inseparable union to beget children and to rear them up and to render each other mutual assistance."

Marriage Qualifications.—1. There must be mental capacity. Insane, demented, imbecile parties or persons deprived of the free use of their minds

by intoxication or any other cause cannot contract a binding marriage.

2. Minors must have completed their fourteenth year of age.

3. Minors of legitimate birth under 24 years of age require the consent of their parents or proper guardians. Illegitimate minors under 24 years of age require the consent not only of their legal guardians but also that of the court.

4. There must be free consent of both parties.

5. Physical capacity. Permanent and incurable impotence is an impediment to marriage.

6. Moral impediments. No person who has taken holy orders which involve a solemn vow to celibacy can contract a valid marriage. Marriages between Christians and Jews are forbidden.

CONSANGUINITY AND AFFINITY.—Marriage is forbidden between ascendants and descendants, between full or half brothers and sisters, between first cousins and between uncles and nieces or aunts and nephews. The relationship may arise from legitimate or illegitimate birth.

For Jews, however, the impediment of consanguinity extends no further in the collateral line than to marriage between brother and sister or between a woman and her nephew or grandnephew.

A Roman Catholic is expressly forbidden to marry a divorced party until after the death of the latter's former consort.

PRELIMINARIES.—A valid marriage can take place only after formal publication of the banns and the solemn declaration of consent.

Banns are published by announcing the coming marriage together with the full names of both parties, their birthplace, status and residence, on three consecutive Sundays or holidays. In the case of Jews the banns must be published on three consecutive Saturdays or feast days.

CELEBRATION.—The solemn declaration of consent must generally be given before the spiritual pastor of one of the parties or before his representative. Two witnesses are necessary.

A civil marriage in which the solemn declaration of consent is given before the chief administrative official of the district, in the presence of two witnesses and a sworn secretary, is obligatory if neither party belongs to a legally recognized religious sect.

FOREIGN MARRIAGES.—The marriage of an Austrian subject in a foreign country is treated as valid in Austria if the marriage was concluded according to the laws of such foreign country, and provided that such marriage was not in contravention of the Austrian law which accepts the Roman Catholic dogma of the indissolubility of marriage except by death of one of the parties.

ILLEGITIMATE CHILDREN.—Such children are fully legitimatized by the subsequent marriage of their parents.

ROMAN CATHOLICS.—As we have noted before between Roman Catholics the bond of marriage cannot be dissolved by divorce. This rule applies even if one of the parties is converted after marriage to a non-Catholic sect.

The Austrian law provides a way by which some Roman Catholic marriages may be provisionally dissolved after what is termed a "legal declaration of death." If eighty years have elapsed since the birth of an absent spouse, and his or her place of residence has been unknown for ten years; if an absent spouse has not been heard from in thirty years; or if a spouse has been missing for three years, and was last heard of under circumstances leaving little doubt as to his or her death, then an action can be instituted to have the absentee legally declared to be dead. Such

a declaration of death will legally dissolve the marriage, leaving the spouse of the missing party free to marry again. However, should the absentee spouse ever reappear, the declaration of death and the new marriage lose all legal effect.

DIVORCE.—Non-Catholic Christians may obtain absolute divorce for the following causes:

1. Conviction of adultery, or of a crime the penalty for which could be a prison sentence of five years.
2. Malicious abandonment.
3. Severe cruelty.
4. Conduct endangering the life or health.
5. Invincible aversion on account of which both parties desire a divorce. This need not be a mutual aversion, but it must be shown to be actual and lasting. For this cause an absolute divorce is granted only after a temporary separation from bed and board has been decreed, and the parties appear to be irreconciliable.

EFFECTS OF DIVORCE.—The woman retains the name of her husband, and both parties may remarry, with the exception that a guilty party may not marry his or her accomplice.

The guilty party loses all rights and privileges in the property of the innocent party.

As to the custody of children the court has authority to make such order as the facts and justice may require.

JEWISH DIVORCES.—Jews in Austria may obtain absolute divorce under special regulations adapted from the Mosaic law and rabbinical jurisprudence.

Marriage may be absolutely dissolved by means of a bill of divorcement given by the man to the woman, with the mutual agreement of both parties. This cannot take effect at once, but there must be three attempts at reconciliation, either by the rabbi or by the court, or by both.

The Austrian law also permits a divorce among Jews for the proven adultery of the wife, in which case he can give her a bill of divorcement without her consent. A Jewish woman cannot obtain a divorce because of the adultery of her husband.

JUDICIAL SEPARATION.—A judicial separation may be granted for the following causes:

1. By mutual consent.
2. Conviction of either spouse for adultery or a crime.
3. Malicious abandonment.
4. Conduct endangering the life or health of spouse seeking relief.
5. Incurable disease united with danger of contagion.
6. Cruel and abusive treatment.

CHAPTER XI.

Hungarian Marriage and Divorce Laws.

In Hungary proper and Transylvania, together with Fiume and certain parts of the Military Boundary, the marriage law of 1894, supplemented by the Civil Registration Act of the same year, is in operation for all citizens, without regard to religious sect.

In Croatia and Slavonia, which, although legally parts of the Kingdom of Hungary, are autonomous in domestic affairs; three separate systems of marriage regulation are in force governing, respectively, the Catholics, the Oriental Greeks, and the Protestants and Jews.

Hungary Proper and Transylvania.—Civil marriage is the only form recognized by law.

Marriage Qualifications.—A man cannot marry before the conclusion of his eighteenth year; a woman before the conclusion of her sixteenth year. A minor cannot conclude a marriage without the consent of his or her legal representative.

Impediments.—1. Marriage is forbidden between ascendants and descendants.

2. Between brother and sister.

3. Between brother or sister and offspring of brother or sister.

4. Marriage between a person who has been previously married and a blood relative in direct line of that person's former consort is forbidden.

5. First cousins may not conclude marriage, except on dispensation from the Minister of Justice.

6. No person may conclude a marriage with any one who has been legally sentenced for a

murder or a murderous assault committed on the former's consort, even if the sentence has not yet entered into effect.

7. No one may conclude a marriage without the consent of his ecclesiastical superiors if he has taken ecclesiastical orders or vows which, according to the law of the church to which he belongs, prevent his marrying.

8. So long as the guardianship continues, marriage is prohibited between a guardian or his offspring and the ward.

PRELIMINARIES.—Before a marriage can be lawfully celebrated it must be preceded by the publication of banns. This publication must be made in the commune or communes where the parties ordinarily reside. Publication is made by posting an official notice for fourteen days in the office of the registrar and in a public place in the communal building.

CELEBRATIONS.—Marriage is, as a rule, to be solemnized before the registrar of the district in which at least one of the parties has his or her residence or domicile. At the celebration of marriage the parties are obliged to appear together before the officiating magistrate, and in the presence of two competent witnesses declare that they conclude a marriage with each other. After such declaration the magistrate declares the couple to be legally married.

The registrar is required by law to enter a record of the marriage on his official register and to give a formal marriage certificate to the parties.

FOREIGN MARRIAGES.—In general, for a marriage contracted by a Hungarian citizen in a foreign country to be recognized as valid in Hungary, the parties to the marriage must satisfy the requirements of their respective States as to age and legal capacity and must be free from all

other impediments contained in the law of either State. The Hungarian citizen must comply with the regulations of the Hungarian law regarding publication.

Besides this, the foreign marriage must be concluded in accordance with all the requirements of the country where it was celebrated.

ILLEGITIMATE CHILDREN.—If at the time such children were born the parents could legally have married each other then the subsequent marriage of the parents makes legitimate the children.

ANNULMENT OF MARRIAGE.—Marriages may be annulled because of the violation of the various provisions of law regarding marriage impediments or the formalities necessary to conclude marriage.

DIVORCE AND SEPARATION.—Marriage can be legally dissolved only by a judicial decree on certain grounds specified by law. These grounds are of two classes—absolute and relative.

The following causes constitute absolute grounds for divorce:

1. Adultery.
2. Crime against nature.
3. Bigamy.
4. Wilful abandonment without just cause.
5. Attempt upon the life or wilful and serious maltreatment such as to endanger bodily safety or health.
6. Sentence to death or to at least five years in prison or the penitentiary.

For all of the above causes the court must grant an absolute divorce if the allegations are proven.

Divorce may also be granted on the following "relative grounds" if the court, after careful consideration of the individuality and characteristics of the parties, is satisfied that the facts warrant the desired relief:

1. Serious violation of marital duties.
2. Inducing, or attempting to induce, a child belonging to the family to commission of a criminal act or to an immoral manner of life.
3. Persistent immoral conduct.
4. Sentence to prison or the penitentiary for less than five years, or to jail for an offence involving dishonesty.

JUDICIAL SEPARATION.—An action for separation from bed and board can be maintained on any of the grounds enumerated for divorce.

EFFECTS OF DIVORCE OR SEPARATION.—After a divorce the guilty party is required to restore to the innocent party all gifts made by the latter before or during the marriage. The man who is declared guilty is obliged to maintain the innocent woman in a position in keeping with his estate and social position, in so far as her income is insufficient. Alimony is payable as a rule in advance monthly instalments. The right to alimony continues after the man's death, but on the application of his heirs it may be reduced to the amount of the net income of the estate. The right to alimony ceases if the woman marries again.

Up to their seventh year minor children are entrusted to the care of the mother; after that time, to the innocent party. If both parties are guilty the father receives the custody of the boys and the mother that of the girls.

The effects of separation are the same as those of divorce in reference to property, alimony and custody of children.

FOREIGN DECREES.—In matrimonial causes where one or both of the parties is a Hungarian citizen the courts of Hungary do not recognize any foreign judgment or judicial decree.

CHAPTER XII.

Sweden.

Marriage.—Swedish law recognizes marriages which are to take effect in the future (*sponsalia de futuro*), and the existence of a betrothal that has been entered into in the presence of four witnesses and the woman's marriage guardian carries with it the obligation of a final fulfilment of the marriage promise, which under certain conditions is subject to enforcement by law. Thus, on the refusal of one of the affianced parties to proceed to the promised marriage, they can be proclaimed man and wife by judgment of the court, and the complainant has then the rights of a legally wedded person. This method of procedure is resorted to particularly if cohabitation has taken place subsequent to the betrothal, but in the absence of such cohabitation various causes can render the promise of marriage invalid. Diseases of a contagious or of an incurable nature, whether contracted before or after the marriage promise was given, insanity, ungovernable temper, licentiousness or other vices, and serious defects are sufficient impediments to the compulsory marriage of betrothed persons.

A person who, under false pretenses, entices another to promise marriage, cannot demand the fulfilment of the promise and is even liable to punishment.

A betrothal entered into through force or fear, or during a state of intoxication or temporary insanity, is not valid.

Impediments to Marriage.—

1. Lack of free consent.

2. Epilepsy. Sufferers from epilepsy (*epilepsia idiopathica*) are barred from marrying.

3. A heathen or a person who does not belong to any recognized religious creed cannot contract a lawful marriage.

4. Non-age. Marriage can be lawfully entered into by males 21 years of age and over and by females 17 years of age and over. A male Laplander, however, may marry when 17 years of age and a female when 15 years of age. A dispensation may be granted from the impediment of non-age, but such dispensation is not granted a male unless his marriage is approved by his parents or guardians and unless he is a person of good reputation and able to support a wife.

Consent of Parents.—A male requires the consent of no third party. Any female under 21 years of age requires the consent of her marriage guardian.

Consanguinity and Affinity.—Marriage is prohibited between relatives by blood in the direct line or between two relatives by blood in the collateral line, one or both of whom are descended in the first degree from the common ancestor.

Marriage is also prohibited between relatives by affinity in the direct line.

In all cases relationship by illegitimate as well as legitimate birth is included.

A divorced person who has been adjudged guilty of adultery cannot contract a new marriage without the consent of the innocent party, provided the latter is still living and has not remarried. Under no conditions can the guilty party marry his or her accomplice.

No man or woman who is bound by a betrothal or by an undissolved marriage can marry a third person.

A widower must not contract a new marriage within six months after the death of his wife, nor a widow within one year after the death of her husband.

PRELIMINARIES.—On three successive Sundays or holy days previous to a wedding banns must be published from the pulpit of the State church in the parish in which the prospective bride resides.

CELEBRATION.—The usual form of marriage is the religious ceremony. This alone is valid in case the man and woman belong to the same religious sect. An adherent of the State church who has never been baptized or who has never been prepared for the rite of the Lord's Supper has recourse only to a civil marriage. This is also the case in a marriage between a Christian and a Jew and in a marriage between parties who belong to a Christian church the clergy of which have not been granted the right to perform marriages.

DIVORCE AND JUDICIAL SEPARATION.—Grounds for Judicial Divorce. An absolute divorce can be granted by court on the following grounds:

1. Adultery.
2. Illicit intercourse with a third party after betrothal.
3. Malicious desertion for at least one year, provided the absentee has left the Kingdom.
4. Absence without news for six years.
5. An attack on the life.
6. Life imprisonment.
7. Insanity of at least three years' duration and pronounced incurable by physicians.

ROYAL PREROGATIVE.—All the grounds for divorce by royal prerogative are not definitely determined. The following alone are specifically mentioned in the law:

1. Judicial condemnation to death or to civil death, even if a royal pardon is granted.

2. Judicial condemnation for a gross offence or an offence incurring temporary loss of civil rights.

3. Judicial condemnation to imprisonment for at least two years.

4. Proof of prodigality, inebriety or a violent disposition.

5. Opposition of feeling or thought between the husband and wife which passes over into aversion and hate, provided that a separation from bed and board has been granted on this ground and lasted for a year without a reconciliation taking place during the interval.

Limitations to Right of Action.—Collusion, connivance, condonation or recrimination extinguishes the right to a divorce.

In a case of adultery divorce will be granted only if the innocent spouse has instituted proceedings within six months after obtaining knowledge of the offence, has not condoned it by cohabitation or otherwise and has not been guilty of a similar offence.

If the insanity of the defendant in a divorce suit has been caused, or even accelerated by the cruel treatment of the complainant, divorce will be refused.

Procedure.—In a case of desertion, if the whereabouts of the guilty party is unknown, the court, by means of publication in all the pulpits of the district, orders him to return within a year and a day. If he does not present himself within the time mentioned the judge pronounces the divorce. Where the ground is insanity the judge must give a hearing to the nearest relatives of the afflicted party and investigate carefully the married life of

the couple, in order to learn whether the insanity was caused or even accelerated by the plaintiff.

The State's attorney is not authorized to interfere in a suit for divorce, nor are attempts at reconciliation required.

The court can, however, advise a reconciliation, with or without the adjournment of the case.

JUDICIAL SEPARATION.—This is often only the preliminary to an absolute divorce. It can be granted when hate and violent anger arise between husband and wife and one of them reports the matter to the rector of the parish. It is the duty of the rector to admonish the couple. If they do not become reconciled they are to be further admonished by the consistory. If this admonition also proves fruitless the court grants a separation from bed and board for one year. The law provides also that this procedure may be followed in cases of malicious desertion, where the guilty party remains in the country or where one party drives the other from home.

CHAPTER XIII.

Denmark.

Justice is administered in Denmark in the first instance by the judges of the hundreds in the rural communities and by the city magistrates in the urban districts. Appeals from such courts lie to the superior courts of Copenhagen and Viborg, and in the last resort to the Supreme Court, which consists of a bench of twenty-four judges, at Copenhagen.

Denmark was one of the first countries in Europe in which the government established any regulation or control over matrimonial affairs.

The body of the law on marriage and divorce is found to-day in the Code of Christian the Fifth (1683), as modified and modernized, and such customs and precedents of the Danish people as the courts accept as binding.

Betrothal.—A betrothal or engagement to marry carries with it no legal obligation. The courts of Denmark do not recognize the breach of a promise to marry as constituting a legal cause of action.

If, however, a woman, on promise of marriage, permits sexual intercourse, she can sue to have the marriage specifically performed, provided the man is at least 25 years of age and the woman herself is of good reputation and neither a widow nor a domestic servant who has become pregnant by her employer or one of his relatives. In addition, the betrothal must either have been public or capable of easy proof.

Qualifications for Marriage.—A male cannot legally conclude marriage before the completion of

his twentieth year. A female must have completed her sixteenth year. The King may grant a dispensation permitting parties of less age to marry.

Males and females are minors until the completion of their twenty-fifth year, and during minority cannot conclude marriage without the consent of their parents or guardians. If the necessary consent is withheld without just cause the authorities can furnish the desired permission.

IMPEDIMENTS.—Marriage is prohibited between relatives in the direct line, whether by blood or marriage, and between brothers and sisters of the whole or half blood.

The royal dispensation is required for marriage between a man and his brother's widow, his aunt, great-aunt or any feminine relative nearer of kin to the common ancestor than the man himself.

Persons convicted of having committed adultery with each other may not marry without having first obtained permission of the civil authorities.

Persons divorced by extra-judicial decree are not allowed to contract a new marriage, without permission to this effect is given in the decree.

The law prescribes a mourning period of one year for a widow and three months for a widower, during which time they are not allowed to contract a new marriage; but under special conditions the mourning period may be shortened.

PRELIMINARY FORMALITIES.—If the marriage is solemnized before a clergyman banns must be published from the pulpit for three consecutive Sundays, and the marriage must follow within three months. In case of a civil marriage one publication must be made by the authorities at least three weeks and not more than three months before the celebration.

CELEBRATION.—The national church of Denmark is the Lutheran, and in the case of Protestant

Christians a religious marriage must be solemnized before a clergyman of the Lutheran Church.

Civil marriages performed at the courthouse by a magistrate are permitted when the bride and groom are of different religious faith or when neither of them belong to any recognized religious sect.

Illegitimate Children.—Subsequent marriage of the parents legitimatizes a child born out of wedlock.

Annulment of Marriage.—A marriage may be annulled at the instance of one of the parties for the following causes:

1. Want of free consent by one or both parties.
2. If one of the parties at the time of the marriage was impotent and this fact was unknown to the other. This impotence must, however, be incurable and continue for three years.
3. If one of the parties was at the time of the marriage afflicted with leprosy, syphilis, epilepsy or a contagious and loathsome disease, and this fact was concealed and unknown to the other party. The disease must be incurable.

Divorce.—An absolute divorce upon proper grounds may be obtained by means of a judicial decree, royal authorization given to the higher civil authorities, authorization from the Minister of Justice, or a special royal decree.

The causes for an absolute divorce are:

1. The last two causes mentioned above as sufficient for an annulment.
2. Adultery.
3. Bigamy.
4. Wilful abandonment.
5. Absence for five years or more under circumstances leading a reasonable person to conclude that the absentee is dead. Exile or deportation from the country for at least seven years.

6. Imprisonment for life, if pardon or liberty is not given within seven years.

EXTRA-JUDICIAL DIVORCE.—The Mayor of Copenhagen and the superior magistrate outside of Copenhagen—called the higher civil authorities—may give a royal authorization for a divorce in cases where the parties have lived apart for three years in consequence of a separation decree, and both parties ask for divorcement.

The Minister of Justice has also authority in some instances to grant decrees of absolute divorce.

The conditions under which a divorce can be granted by special royal decree are not specifically defined, but the decree is seldom granted except for substantial reasons and according to precedent.

SEPARATION.—Decrees of separation from bed and board may be obtained upon mutual consent of the parties or if good reason exists upon the petition of one of the parties.

EFFECTS OF DIVORCE.—Usually in the absence of an agreement between the parties each party receives one-half of the property which during the marriage relation was held in common.

The duty of mutual support and assistance ends, but sometimes the man is directed to pay alimony to the woman.

The innocent party is generally given custody and control of the children of the marriage, but the courts favour an agreement between the parties on this subject.

Unless the decree of divorce has been brought about by her guilt a divorced wife is permitted to retain the name and rank of her divorced husband.

CHAPTER XIV.

The Norwegian Law.

In many respects the laws of marriage and divorce in Norway resemble those of Denmark. There are, of course, historical and political reasons for the resemblance.

Marriage.—The law of Norway fixes 20 years as the minimum marriageable age for a man and 16 years for a woman. These provisions are often interpreted, however, by the courts, as having reference to the age of puberty, and as this age varies with different persons the law is not always followed literally, particularly as regards the marriageable age of a woman. Neither male nor female under the age of 18 years is allowed to marry without the consent of parents or guardians.

The validity of an objection to the marriage on the part of parents or guardians can be tested in court, and although causes for such objections are not specified or limited by statute they are kept within reasonable grounds through long-established precedent.

Impediments to Marriage.—No man or woman may marry a relative by blood in the direct line. No man can marry his full or half sister.

Persons convicted of having committed adultery with each other may not marry without first obtaining permission of the civil authorities.

A person bound by a marriage not dissolved through natural or legal causes is not allowed to enter into any other matrimonial alliance.

After the death of her husband a widow must wait nine months before she can contract a new marriage, but this waiting period can be shortened

by dispensation, especially if she proves that she is not pregnant.

PRELIMINARIES.—In case of religious marriage one publication of banns is sufficient, and even this can be dispensed with in some instances. For a civil marriage no publication of banns is required.

CELEBRATION.—Marriages must be solemnized before a minister of the Lutheran Church or by some person authorized by the State to officiate, and in the presence of two competent witnesses. The wedding celebration may take place either in church or in a private house.

All notaries have legal authority to perform civil marriages, but only between persons at least one of whom does not belong to the State church.

ANNULMENT OF MARRIAGE.—Nullity is of two kinds—absolute and relative. In the case of the latter the marriage is considered as valid until declared otherwise, generally on the application of one of the parties. A marriage is absolutely null if at its celebration there was no declaration of the clergyman or of the civil official that the couple were man and wife, or if proof exists of bigamy or of relationship within the prohibited degrees.

DIVORCE AND SEPARATION.—An absolute divorce may be obtained for sufficient cause either by royal decree or by judicial determination. The most usual form is by royal decree, which is granted in the following cases:

1. When one at least of the causes prescribed by law is proven.

2. After a separation from bed and board has lasted three years. In such a case the royal decree is granted either on the petition of both parties, or, if circumstances justify, on the petition of one of the parties.

3. It may be granted by royal decree without any preceding separation. This form of divorce is granted either when legal cause for divorce exists or when the ground is otherwise considered sufficient.

A judicial decree of absolute divorce is obtainable for the following causes:

1. Adultery.
2. Bigamy.
3. Wilful desertion for at least three years.
4. Assault and cruel treatment endangering the life of the complainant.
5. Absence for seven years, especially if no information has been received of the absentee during that period.

If the facts as shown leave little or no doubt as to the death of the absent party, a divorce can be granted after three years' absence.

6. Imprisonment for life, after the innocent party has waited seven years.

In addition to these grounds a divorce by royal decree can be obtained when one of the parties has become incurably insane or has been sentenced to prison for at least three years; or when the parties, by mutual agreement, have lived entirely apart for fully six years, and the facts show that domestic peace and the well-being of the parties are not promoted by their continuing as husband and wife.

Limitations.—If the act complained of was committed by the consent or procurement of the complainant, or if the latter has voluntarily cohabited with the offender after discovery of his or her guilt, or if the complainant has been guilty of a similar offence, divorce will be refused.

Effects of Divorcement.—Each of the parties receives one-half of the common property, but agreements are permitted by which the man retains

all such property on condition of paying the woman an annual allowance.

The duty of mutual assistance ceases, although if justice demands the man may be ordered to pay alimony to the woman. The Norwegian law contains no hard-and-fast rule as to the custody of the children of divorced parents. When no agreement exists between the parties the innocent party is generally given custody of all the children.

A woman who obtains a decree of divorce against her husband is allowed to retain the name and rank of her ex-husband.

SEPARATION.—A separation from bed and board may be granted either on the mutual consent of both parties, or by royal decree on the petition of one of the parties if reasonable grounds exist.

CHAPTER XV.

The Russian Empire.

There have always been plenty of laws in Russia, the chief difficulty being not with the quantity but the quality. Another perplexing feature of Muscovite laws is the uncertainty of this patchwork of royal decrees, undefined traditions, changing customs and priestly superstitions.

If Peter the Great had lived long enough he would probably have given Russia a regular code such as Napoleon bequeathed to France, but he was too busy during his career with wars, travels and social reforms.

The Emperor Nicholas I. is entitled to the credit of being the first Russian sovereign to direct the compilation of anything approaching a classified legal code, and under his authority the jurist Speransky collected together some forty volumes. This code, as revised from time to time, is the best exposition obtainable of the law of the Empire. Its first article, however, qualifies the entire code by recognizing the Tsar's privilege of altering or setting aside any law of the realm at will.

Until recently the first lesson for the Russian law student to learn was expressed in the doctrine: *Quod principi placuit, legis habet vigorem.* "The sovereign's pleasure has the force of law."

Many reforms have of late years been worked in Russian law and judicial procedure, but in these matters Russia is still a long way off from justifying the belief expressed by Count Mouravieff, that this country has a civilizing mission such as

no other nation of the world, not only in Asia, but also in Europe.

Such benefits as can be derived from the law are still more for the privileged classes than for the great body of the people, and the point has not yet been reached of substituting judicial trials for ecclesiastical in matrimonial causes.

The regulations concerning marriage and divorce fall within the province of the clergy and the ecclesiastical courts, except that the civil tribunals have jurisdiction over annulment and divorce for the *Raskolniken,* or "Old Believers," and for the Baptists and some other dissenters from the State Church of Russia.

With the exceptions noted, the regulations of each form of religious belief, including Mohammedanism and other non-Christian beliefs, are endorsed by the State as the law for the adherents of that belief. The civil courts, however, have jurisdiction over the civil effects of marriage and divorce, and the State law contains certain provisions binding on the adherents of all religious confessions.

The regulations governing the Roman Catholics are, in general, those of the canon law and those governing the German Lutherans are those of the old Protestant common law of Germany.

We shall consider the special regulations affecting the Jews in a separate division of this chapter.

MARRIAGE.—A man reaches marriageable age upon the completion of his eighteenth year and a woman upon the completion of her sixteenth year; natives of Transcaucasia, however, may marry at the completion of the fifteenth and thirteenth years, respectively.

A marriage cannot take place without the free and mutual consent of the principals. The exer-

cise of any kind of compulsion is forbidden to parents or guardians.

Without regard to their age children require the consent of their parents. In most parts of Russia there is no appeal in case a parent withholds consent. Marriage without parental consent is not invalid, but the guilty person is liable to a penalty of from four to eight months' imprisonment, on petition of the parent, and to the loss of his right of inheritance in the property of the parent.

Persons who are under guardianship or curatorship require the consent of their guardian or curator.

CONSANGUINITY AND AFFINITY.—The prohibited degrees of consanguinity are determined according to the principles of the religious body to which the parties belong. Marriage is, however, universally prohibited between persons who are related in the first or second degree.

DIFFERENCE OF RELIGION.—Marriage between Christians and non-Christians is prohibited, except between Lutherans, adherents of the Reformed Church, and other Protestants on the one hand, and Jews and Mohammedans on the other.

INSANITY.—Marriage is absolutely prohibited to insane persons.

OFFICIAL PERMISSION.—Civil officials require the consent of their superiors in order to marry.

HOLY ORDERS.—Marriage is prohibited to the clergy of the State Church, but if a secular priest is already married before ordination he may continue in that relation. The practice is for the majority of men who intend to enter the secular priesthood to marry before ordination.

ADVANCED AGE.—Persons who have attained the age of eighty years may not marry.

FOURTH MARRIAGE.—The contracting of a fourth marriage is unconditionally forbidden.

PRELIMINARY FORMALITIES.—A male member of the Russian Church, or an "Old Believer," who intends marriage, must, from one to three weeks before the date of celebration, announce the fact to the clergyman in whose parish he resides, and bring to him the certificates of baptism of himself and his intended bride, certificates of their social status, proofs of identity and a certificate that both parties have been to confession and received holy communion. With these documents and proofs at hand the clergyman announces the names of the betrothed parties on three successive Sundays or feast days. The marriage cannot be concluded without a certificate showing that all the formalities have been complied with.

CELEBRATION.—A marriage may be solemnized in accordance with the rules of the religious sect of the parties, before one of its clergymen, with the personal participation of the contracting parties and in the presence of competent witnesses. For members of the Russian Church the solemn betrothal, which formerly took place some time previous to the marriage, now introduces the wedding ceremony. The latter must follow the prescribed ritual exactly. The wedding must take place in church, during the daytime, before adult witnesses, and the contracting parties must be actually present.

ILLEGITIMATE CHILDREN.—The subsequent marriage of the parents does not in itself legitimatize such offspring. After their marriage the parents must petition the court for an order of legitimacy.

ANNULMENT OF MARRIAGE.—Any marriage is null that was not solemnized by a clergyman of the religious sect of which one of the contracting parties is an adherent, except those solemnized be-

fore a priest of the Russian Church, because of the absence of a clergyman of the proper religious sect. A marriage is also null in case of bigamy, difference of religion and violation of the rules concerning consanguinity and affinity.

Divorce.—It is impossible for an adherent of the Russian Church or for an "Old Believer" to obtain a decree of absolute divorce.

The grounds for an absolute divorce for other persons except Jews are:

1. Adultery.
2. Bigamy.
3. Impotence existing at time of marriage.
4. Absence without news for five years.
5. Condemnation to the loss of all civil rights.
6. Banishment to Siberia with the loss of all special rights. Either party may petition for divorce on this ground.
7. Entrance of both spouses into a religious order, provided they have no children who need their support and care.
8. Conversion of a non-Christian to the Russian Church, provided he or his consort desires such divorcement.

Procedure.—In the case of a Christian who is not an "Old Believer" or a member of the Russian Church, the petition for divorce is filed in the ecclesiastical court. After this the bishop designates a clergyman, who is to make an attempt to reconcile the parties. Not until this attempt has failed is notice served on the defendant and the day set for a hearing of the cause. If the court decides in favour of a divorce, the decree must be submitted to the Synod for revision. In case of condemnation to the loss of civil rights, a divorce is granted immediately.

If the ground relied on is the conversion of a non-Christian to the Russian Church, the divorce

is granted merely on the formal declaration of one of the spouses that he or she does not wish to continue the marriage.

EFFECTS OF DIVORCE.—The adjustment of the personal and property rights and the custody of the children are matters entirely for the discretion of the tribunal.

LAW FOR LUTHERANS.—Members of the Lutheran Church outside of Finland are governed by special regulations concerning the grounds for divorce. These grounds are:

1. Adultery.
2. Unlawful relation with a third party before the marriage, though in the case of the husband only such relations subsequent to the betrothal are considered.
3. Wilful refusal of one party to live with the other.
4. Unjustified absence for two years without news.
5. Absence for five years.
6. Unjustified refusal to perform the marital duty for at least one year.
7. Wilful prevention of conception.
8. Impotence existing at time of marriage.
9. Incurable or loathsome disease existing at time of marriage and concealed from the other party.
10. Incurable insanity.
11. Vicious conduct.
12. Cruel and abusive treatment.
13. Design of one spouse to bring dishonour on the other.
14. Infamous crime.

FINLAND.—In this country marriage between Christian and non-Christian, and the marriage of a Lutheran who has not yet been admitted to the rite of holy communion, are prohibited.

In case of seduction marriage is prohibited unless the consent of the parents or of the court is obtained.

Divorce is permitted in Finland for the following causes:

1. Adultery.
2. Illicit intercourse with a third party after betrothal.
3. Malicious desertion for one year.

By petition to the Department of Justice of the Imperial Senate a Finn can obtain, for sufficient cause, a divorce on other grounds.

Rights of Married Women.—When we come to consider the rights, or rather, the lack of rights, of married women in the Muscovite Empire we must remember that Russia is only geographically in Europe, and only nominally a Christian State. It is a country standing alone on the map of the world, five centuries behind in civilization what is really Europe.

Although among the so-called higher classes woman is often treated socially—not legally—as the equal of her husband, among the great bulk of the population she has little more status than that of a domestic animal.

There is no other country on earth pretending to be civilized where a woman, single or married, has so few rights recognized by the State or the national church.

A married woman in Russia owns nothing. It is all her husband's. She is, however, allowed the privilege of saving up a little hoard of her own on the flax or wool out of which she makes the clothing for her husband and children. This little hoard is called her *korobka,* and upon her death it goes to her children. If she dies childless it goes to her mother, and if her mother is also dead it goes to her single sisters.

Such a *korobka,* when accumulated by a single woman from her earnings, is considered as a dowry upon marriage, and it is generally applied by the bridegroom to pay the wedding expenses.

Count Mouravieff could not have been thinking of woman's place in his native land when he said: "We Russians bear upon our shoulders the New Age; we come to relieve the tired men." It is our opinion that the nation which is most likely to bear upon the shoulders of its people the New Age is the country which treats its womankind the best.

Special Laws for Jews.—The law of marriage and divorce which governs the Jews of Russia differs in many particulars from the rules applicable to adherents of other sects. This special set of regulations comes from the people of Israel themselves and is an outgrowth of the ancient Mosaic code of jurisprudence. In thus permitting the Jews to have a body of rules founded on the ancient precedents of their race and in agreement with their consciences we find at least one attitude of wise tolerance for which the Russian Empire is entitled to credit.

Betrothal.—A Jewish betrothal must take place in the presence of two competent witnesses. The consent of the parents of either party is not required. Like marriage the betrothal can be dissolved only by death or by divorce. It obligates the parties to marry within thirty days from the date on which either demands marriage.

A betrothal may be dissolved on the following grounds:

A. Evil conduct.

B. Change of religion.

C. Insanity.

D. Unchastity of either party or of one of his or her near relatives.

E. By the man entering a dishonest occupation.

IMPEDIMENTS.—Besides the impediments which prevent certain people of other sects from lawfully concluding marriage there are other impediments specially applicable to Jewish people. Briefly enumerated they are as follows:

1. A woman guilty of adultery, or even of secret association, with a man against her husband's will cannot marry her accomplice.

2. A marriage between a Jew and an idolator is forbidden.

3. If a woman's husband has died childless, and is survived by a brother, she can marry no one else than this brother until the latter has declined marriage with her in the prescribed form.

4. After the death of near relatives a marriage may not take place within thirty days.

5. A widow or divorced woman may not contract a new marriage within ninety days from the dissolution of her earlier marriage.

6. A pregnant woman may not marry before her delivery.

7. A widower may not marry before three feast days have passed since the death of his wife, but in case he is childless or his children require a mother's care he may marry after seven days.

DIVORCE.—The Jewish law makes no distinction between divorce and annulment. The grounds for divorce are as follows:

1. Bigamy.

2. Difference of religion.

3. Relationship in the first degree in the direct line, by blood or marriage. No legal action is necessary for these three causes.

4. Adultery.

5. Leprosy of the husband.

6. Mutual consent of the parties.

7. Such conduct on the part of the wife as raises a reasonable suspicion of her adultery.

8. The cursing by the wife of her father-in-law in her husband's presence.

9. Wife's desertion of husband.

10. Wife's refusal for one year to perform marital duty.

11. Husband's cruelty to wife.

12. Husband's apostasy from the Jewish religion.

13. When the husband is a fugitive from justice.

14. Neglect of husband to support his wife.

15. Persistent vicious and disorderly manner of life on part of the husband.

16. Husband's admission that he is incurably impotent.

17. The contraction by the husband of a loathsome disease.

18. The adoption by the husband of a dishonest or disgusting occupation.

19. Such conduct on the part of the wife as causes her husband, without deliberation, to violate the ritualistic requirements of the Jewish religion.

PROCEDURE.—The rabbi is the judge in the first instance of a divorce petition. Appeal from his decision lies to the civil authorities.

In the ordinary divorce case the first action by the rabbi is an attempt to reconcile the parties. A confession of the guilty party is competent evidence.

The divorce becomes effective by the man delivering to the wife, after the rabbinical decision, a bill of divorcement. This is done even if the wife is the successful suitor. The husband can be compelled to make such a delivery.

Effects of Divorce.—The dowry (*Nedunya*), which was settled on the wife at the time of the marriage, must be returned to her if she is the innocent party. The woman retains the name of her divorced husband. Both parties are free to marry again.

CHAPTER XVI.

Holland.

Marriage.—A male must be eighteen years or more and a female sixteen years or more in order to be lawfully married.

Marriage is forbidden between all descendants and ascendants, legitimate or otherwise, and in the collateral line marriages are forbidden between brothers and sisters of the whole or half blood, legitimate or illegitimate.

Marriage is also forbidden in Holland between brothers-in-law and sisters-in-law, between uncle and niece, or granduncle and grandniece, and between aunt and nephew, grandaunt and grandnephew, legitimate or otherwise.

The Queen has power under the law to grant a dispensation for good reasons relieving any couple from the effect of such prohibitions. She has also power, for sufficient cause, to permit persons under age to contract marriage.

As a preliminary to marriage children must ask the consent thereto of their parents, but the consent of the father is sufficient. If the father is dead the consent of the mother suffices.

If the mother and father are both dead the grandparents take their places.

Marriage is treated in Holland as a civil contract.

Celebration.—The ceremony of marriage must take place publicly in the town hall before a registrar, but not until three days after the publication of banns. Four male witnesses of full age must be present. If one of the parties is unable to attend the town hall the marriage may

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be solemnized in a private house, but in such a case six male witnesses of full age are necessary. A religious celebration of the marriage cannot be performed until the officiating clergyman is shown proof that the civil marriage has already taken place.

Foreign Marriage.—A marriage concluded in a foreign country between two Hollanders, or between a Hollander and a foreigner, is recognized as valid in Holland if celebrated according to the requirements of the foreign country, and provided the banns were duly published, without opposition, in the place or places of residence in Holland of the contracting parties, and provided such marriage is not in contravention of the law of Holland.

Annulment of Marriage.—A marriage may be judiciously annulled on the following grounds:

1. Previous existing marriage of one of the parties.
2. Want of free consent on the part of one or both of the parties.
3. Mistake as to identity of person.
4. Insanity or deficient mentality of one or both parties.
5. Lack of marriageable age.
6. Relationship within prohibited degrees.
7. Marriage with an accomplice in adultery.
8. Absence of requisite number of witnesses.
9. Marriage in spite of an objection raised on publication of the banns, in case the objection proves to be well founded.
10. Marriage in violation of any other legal requirement.

Divorce.—In Holland a marriage can be dissolved in one of four different ways:

1. By death of one of the parties.

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2. By the absence of one of the spouses for the period of ten years or more, coupled with the remarriage of the other spouse.

3. By a divorce pronounced after a judicial separation has been obtained by one of the spouses.

4. By a divorce pronounced in the first instance for one of the causes hereinafter stated.

The causes for an absolute divorce are:

1. Adultery.

2. Malicious abandonment continued for five years.

3. Judicial condemnation of one of the spouses to prison for an infamous offence.

4. Grave bodily harm inflicted by one spouse upon the other.

PROCEDURE.—The action for divorce must be instituted before the judge of the district where the husband is domiciled, except when the cause alleged is malicious abandonment, in which case the suit must be brought before the judge of the district in which both parties had their last common domicile.

Before filing the formal petition the complainant must personally attend before the district judge and state the facts, after which it is the duty of the judge to attempt a reconciliation of the parties. The complainant must appear without counsel or relatives. The judge next orders both parties to appear before him without counsel or relatives in the further endeavour to effect a reconciliation.

If a reconciliation appears to be impossible the formal petition for divorce is then filed with the court.

All suits for divorce are heard *in camera*, and the public prosecutor must attend.

EFFECTS OF DIVORCE.—In so far as the innocent party is not able to support himself or herself out of his or her income the guilty party is bound, if able, to provide support.

Except when it appears to the court that justice otherwise requires, the custody of the children is given to the successful suitor.

The innocent party retains all gifts made to him or her by the other and the guilty party loses them all.

Both parties are free to contract a new marriage.

JUDICIAL SEPARATION.—A separation from bed and board may be granted on the same grounds as entitle a party to an absolute divorce. Such a separation may also be judicially granted by consent of both spouses.

After a judicial separation has existed for five years either of the parties may petition the court to enlarge the decree of separation into a decree of absolute divorce.

CHAPTER XVII.

The Japanese Civil Code.

The East and the West, the Past and the Present, meet in the Japanese Civil Code, which became law in January, 1893.

It is the first codification of private law that Japan ever had in her long history. Up to that time the basis of Japanese laws and institutions was Chinese moral philosophy, ancestor worship and the old feudal system.

The Criminal Code of Japan (*Shin-ritsu-koryo*), enacted in 1870, was the last legal code founded on Chinese philosophy, customs and traditions, and the Revised Criminal Code (*Kaitei-Ritsurei*) is the first group of Japanese laws based upon European jurisprudence and civilization.

Three periods may be marked in the history of Japan with regard to the legal aspect of the marriage relation. The first was the ancient Japanese period, the second the Chinese period, and the third, the present, that of modern Japan.

The Chinese doctrine of the perpetual obedience of woman to man is expressed in the "Three Obediences": Obedience, while yet unmarried, to the father; obedience, when married, to the husband; obedience, when widowed, to the son.

Buddhism regards woman as an unclean creature, a temptation, and an obstacle to peace and holiness.

The great revolution in the legal position of woman in Japan which the new Civil Code has brought about is as impressive as all the other changes for the better which have of late years taken place in the land of the Cherry Blossoms.

The Chinese and Buddhistic theories concerning womankind have but little influence on modern Japanese law.

Under the Civil Code husband and wife are now on an equal footing, except when consideration for their common domestic life requires some modifications.

Persons who are about to marry are permitted to make any contract with regard to their individual property, and a woman is capable of owning and controlling her separate property all during marriage.

When Japanese law belonged to the Chinese system of jurisprudence there were seven causes for divorce, namely:

1. Sterility.
2. Lewdness.
3. Disobedience to father-in-law or mother-in-law.
4. Loquacity.
5. Larceny.
6. Jealousy.
7. Bad disease.

As under the Mosaic law, these causes were invented only for the advantage of the husband. A wife had no right even to desire a divorce from her husband.

An examination of the seven causes shows that a woman could be divorced practically at her husband's pleasure. The New Civil Code has changed all this. A wife has equal rights with her husband to the benefits of the divorce law.

The New Civil Code of Japan is divided into five books, but it is only with Book IV., which deals with the "Family," that we are at present concerned.

A summary of the present marriage and divorce law of Japan, as translated from Book IV., follows:

Requisites of Marriage.—A man cannot marry before the completion of his seventeenth year or a woman before the completion of her fifteenth year.

A person already married cannot contract another marriage.

A woman cannot contract another marriage within six months from the dissolution or cancellation of her former marriage.

If a woman is pregnant at the time of the dissolution or cancellation of her former marriage this provision does not apply after the day of her delivery.

A person who is judicially divorced or punished because of adultery cannot contract a marriage with the other party to the adultery.

Lineal relatives by blood or collateral relatives by blood up to the third degree cannot intermarry; but this does not apply as between an adopted child and his collateral relatives by adoption.

Lineal relatives by affinity cannot intermarry. This applies even after the relationship by affinity has ceased because of marriage or divorce.

An adopted child, his or her husband or wife, his descendants and the husband or wife of one of his descendants on the one hand, and the adopter and his ascendants on the other hand, cannot intermarry, even after the relationship has ceased.

For contracting a marriage a child must have the consent of his parents, being in the same house. This, however, does not apply if the man has completed his thirtieth year or the woman her twenty-fifth year.

If one of the parents is unknown, is dead, has

quit the house, or is unable to express consent, the consent of the other parent is sufficient.

If both parents are unknown, dead, have quit the house, or are unable to express consent, a minor must obtain the consent of his guardian and of the family council.

This by way of parenthesis: The members of a house comprise such relatives of the head of the house as are in his house and the husbands and wives of such relatives.

The head and the members of a house bear the name of the house.

The head of the house is bound to support its members. A marriage takes effect upon its notification to the registrar. A wedding ceremony is not legally essential.

The notification of marriage must be made by the parties concerned and at least two witnesses of full age, either orally or by a signed document.

If a Japanese couple in a foreign country contract a marriage between themselves they may give the notification of their marriage to the Japanese minister or consul stationed in such country.

Effect of Marriage.—By marriage the wife enters the house of the husband. A man who marries a woman who is head of a house, or a *mukoyoshi,* enters the house of his wife.

A *mukoyoshi* is a person who is adopted by another and at the same time marries the daughter of the house who would be the heir to the headship of the house.

A wife is bound to live with her husband. A husband must permit his wife to live with him.

A husband and wife are bound to support each other. When the wife is a minor the husband, if of full age, exercises the functions of a guardian.

A contract made between husband and wife may be cancelled at any time during the marriage by

either party, but without prejudice to the rights of third persons.

Divorce by Mutual Consent.—The husband and wife may effect a divorce by mutual consent. No court procedure is necessary. Just as in giving notice of marriage, the parties consenting to be divorced give notice of such agreement to the registrar, and they are *ipso facto* divorced.

A person who has not reached the age of twenty-five years, in order to effect a divorce by mutual consent, must obtain the consent of the person or persons whose consent was necessary for the marriage.

If a husband and wife have effected a divorce by mutual consent without arranging as to whom the custody of the children shall belong, it belongs to the husband.

Judicial Divorce.—A husband or wife, as the case may be, can bring an action for divorce for the following causes:

1. If the other party contracts a second marriage.

2. If the wife commits adultery.

3. If the husband is sentenced to punishment for an offence specified in Article 348 *et seq.* of the Criminal Code; such offences involving criminal carnal sexuality.

4. If the other party is sentenced to punishment for an offence greater than misdemeanor, involving forgery, bribery, gross sexual immorality, theft, robbery, obtaining property by false pretences, embezzlement of goods deposited, receiving knowingly stolen goods, or any of the offences specified in Articles 175 and 260 of the Criminal Code, or is sentenced to a major imprisonment or more.

5. If one party is so ill-treated or grossly insulted by the other that it makes further living together of the spouses impracticable.

6. If one party is deserted by the other.

7. If one party is ill-treated or grossly insulted by an ascendant of the other party.

8. If an ascendant of one party is ill-treated or grossly insulted by the other party.

9. If it has been uncertain for three years or more whether or not the other party is alive or dead.

10. In the case of the adoption of a *mukoyoshi*, if the adoption is dissolved, or in the case of a marriage of an adopted son with a daughter of the house, if the adoption is dissolved or cancelled.

CHAPTER XVIII.

Spain.

Spain is a constitutional and hereditary monarchy, the powers of which are defined by the fundamental law of June 30, 1876. The legislative authority is exercised by the sovereign in conjunction with a parliamentary body called the Cortes, which is composed of two houses, a Senate and a Chamber of Deputies.

Spanish law is founded on the Roman law, the Gothic common law, the National Code of 1501, and the Civil Code of 1888, with its subsequent amendments and additions.

Spanish law is binding in the Spanish Peninsula and adjacent islands, the Canary Islands and such African territory as is subject to Spain.

Marriage.—The law recognizes two forms of marriage: the canonical, which all who profess the Catholic religion should contract; and the civil, which must be celebrated in the manner hereinafter stated.

Marriage is forbidden to:

1. Minors who have not obtained parental consent.

2. To a widow, during the three hundred and one days following the death of her husband or before childbirth, if she has been left pregnant.

3. To a guardian and his or her descendants, with respect to persons who are the wards of such guardian until the ending of the guardianship, and a proper accounting has been rendered by the guardian. An exception to this rule exists when the father of the ward has in his will or in a

public instrument expressly authorized such a marriage.

AGE.—A male cannot marry until he has completed his fourteenth year of age; a female until she has completed her twelfth year.

Marriage contracted by persons under puberty shall, nevertheless, be *ipso facto* made legal if a day after having arrived at the legal age of puberty, the parties continue to live together without bringing a suit to set aside the marriage, or if the female becomes pregnant before the legal age, or before the institution of a suit for annulment.

Persons who are not in the full exercise of their reasoning faculties cannot contract marriage.

The law forbids the marriage of all those who suffer from absolute or relative impotency.

Priests and all other persons bound by a solemn pledge of celibacy in the approved canonical manner are forbidden to contract marriage, unless they have first received the necessary canonical dispensation.

Persons already lawfully married cannot contract a new marriage.

CONSANGUINITY AND AFFINITY.—The following persons cannot contract marriage between themselves:

1. The ascendants and descendants by legitimate or illegitimate blood or affinity.

2. Collaterals by legitimate consanguinity up to and including the fourth degree.

3. Collaterals by legitimate affinity up to and including the fourth degree.

4. Collaterals by natural consanguinity or affinity up to and including the second degree.

5. The adopting father or mother and the adopted child; the latter and the surviving spouse of the adoptees, and the adopters and the surviving spouse of the adopted.

6. The legitimate descendants of the adopter with the adopted, while the relation of adoption continues.

7. Accomplices in adultery who have been judicially sentenced.

Those who have been condemned as principals, or principal and accomplice, in the homicide of the spouse of any of the parties cannot conclude marriage between themselves.

The government for sufficient cause will, on petition of a party, grant a dispensation permitting marriage between collaterals by legitimate consanguinity within the fourth degree. Other dispensations may also be granted on a proper petition.

PARENTAL CONSENT.—The consent of the father is required for the marriage of a legitimate minor; in his default, or where he cannot consent, the power to grant it devolves, in this order: upon the mother, the paternal and maternal grandparents, and in default of all these, upon the family council.

Recognized natural children or children legitimatized by royal concession must ask the consent of those who have recognized or legitimatized them or of their ascendants, or of the family council.

Adopted children must ask the consent of the adopting father, and in his default, of the persons of the natural family upon whom it may devolve.

Unrecognized illegitimate children must ask the consent of their mother, when she is known, and in her default consent must be asked of the maternal grandparents, and in their default, that of the family council.

Children of age are obliged to ask the advice of the father, and in his default, of the mother before contracting marriage. In case the advice given is against the proposed alliance, the marriage

cannot be celebrated until three months after the petition is made.

Marriage in Spain is dissolved absolutely only by the death of one of the parties.

CANONICAL MARRIAGE.—The requisites, form and solemnities for the celebration of canonical marriage is governed by the laws of the Catholic Church, and by the decrees of the Holy Council of Trent, which are accepted as part of the organic law of Spain. Canonical marriage produces all the civil effects in respect to persons and property of the spouses and their offspring. A magistrate is required to be present at the celebration of a canonical marriage simply for the purpose of making a verified record in the Civil Registry of the marriage. So that he may be present for the purpose above stated, the magistrate must be given notice in writing twenty-four hours at least before the intended celebration, telling him of the day, hour and place of the marriage.

Persons who contract canonical marriage *in articulo mortis* may give notice to the officials in charge of the Civil Registry, at any time whatever prior to its celebration, and prove in any manner whatever that such duty has been performed.

CIVIL MARRIAGE.—A civil marriage must be preceded by a declaration to the Municipal Judge, stating the names, ages, professions and domiciles of the contracting parties; also the names, professions and domiciles of the parents; and proper certificates of the births and status of the contracting parties; certificates of consent or advice of parents, and dispensations when required.

Marriages may be celebrated personally or by a substitute or proxy to whom a special authorization has been granted.

Civil marriages must be solemnized by the contracting parties appearing before the Municipal

Judge, or one of them, and the person whom the absent party may have appointed as proxy must appear before such magistrate, together with two competent witnesses.

The Municipal Judge, after reading articles 56 and 57 of the Civil Code to the parties (which point out the rights and obligations of married life), must ask each party if they desire to be married to each other, and if both answer in the affirmative, the judge shall declare the parties to be husband and wife, and prepare a record of the marriage.

Consuls and vice-consuls are empowered to exercise the function of municipal judges in marriages of Spaniards, celebrated in foreign countries.

NULLITY OF MARRIAGE.—The following marriages are null and void:

1. Those concluded between persons related within the prohibited degrees.
2. Those concluded between persons under the age of puberty.
3. Marriages between persons, one or both of whom were of incurably unsound mind.
4. Incurably impotent persons.
5. Persons bound by canonical vows to chastity.

The proceeding to have such marriages judicially declared as null may be instituted by either spouse, the Public Attorney, or by any interested person.

The action lapses, and the marriage will be confirmed in cases based on abduction, error, force or fear, when the spouses have lived together six months after the error became known, or after the force or fear has ceased.

DIVORCE.—A divorce in Spain only amounts to what in other countries is called a judicial separation. Accepting the decrees of the Council of Trent as law for Spain, marriage is treated as a

sacramental contract which can only be dissolved by death.

The Civil Code, Article 104, states the following causes for divorce:

1. Adultery on the wife's part.

2. Adultery on the part of the husband, when public scandal or disgrace of the wife is a result

3. Violence exercised by the husband over the wife in order to force her to abandon her religious faith.

4. Cruelty actually inflicted, or grave acts of contumely.

5. The attempt or proposal of a husband to prostitute his wife.

6. The attempts of either husband or wife to corrupt the morals of the sons, or to prostitute the daughters.

7. Condemnation of either spouse to imprisonment for life.

Effects of Divorce or Nullification.—The civil effects of a divorce or annulment of marriage are as follows:

1. Separation of the parties.

2. To place the custody of the children with one or both of the parties, as justice may require.

3. To determine the responsibility for the support of the woman and children.

4. To place the woman under the special protection of the law.

5. To decree the necessary measures to prevent the husband, who may have given cause for divorce, or against whom the petition for nullity of the marriage has been instituted, from interfering with the wife in the administration of her separate property.

Husband and Wife.—The spouses are under mutual obligation to live together, to be faithful to,

and help each other. The husband is bound to protect his wife and the wife to obey her husband.

The wife is required to follow her husband wherever he may establish his residence. The courts, however, will in some cases release her from this requirement when the husband changes his residence to a foreign land.

The husband is the manager of the property of the conjugal union, except when there is a mutual agreement to the contrary.

The husband is the legal representative of the wife. She cannot, without his permission, appear in a suit by herself or through an attorney. However, she does not need such permission to defend herself in a criminal case or to bring a suit against her husband, or to defend herself in a suit brought by her husband against her.

A wife cannot, without her husband's permission, acquire property in trade or by her labour. Neither can she, without such consent, alienate her property.

The wife can, without her husband's permission, perform the following acts:

1. Execute a will.

2. Exercise the rights and perform the duties which pertain to her with regard to legitimate and recognized illegitimate children, the issue of herself and another not now her husband.

Foreign Marriages.—The Spanish courts recognize as valid in Spain any marriage performed in a foreign country in accordance with the laws of such country, provided such marriage also meets with all the requirements of the Civil Code of Spain.

CHAPTER XIX.

Civil Code of Portugal.

On the third day of October, 1910, King Manuel II. of Portugal was dethroned and a Republic was proclaimed throughout the country. At the present time the affairs of the Republic are being administered by a provisional government. Until this temporary administration is followed by a permanent government, based on a national constitution, the Civil Code promulgated in 1867 will continue to be Portuguese law.

Marriage.—Marriage is defined in the Civil Code as a perpetual contract between two persons of different sex to live together and establish a legitimate family.

Catholics must celebrate marriage according to the rules and form prescribed by their church. Those who are not Catholics are required to have their marriage celebrated before a civil officer of the State according to the rules and form prescribed by the civil law of the land.

Marriage is forbidden:

1. Of minors under the age of 21 years, unless with parental consent.

2. Of persons of adult age who are incapable of properly governing themselves or their estates, without the authorization of their legal representatives.

3. Of an adulterous wife with her accomplice who has been condemned for the offence.

4. Of a wife who has been condemned as the principal or accomplice of the crime of homicide with a principal or accomplice in the same crime.

5. Of any person bound by solemn vows of religion to a life of chastity.

The canon law of the Catholic Church defines the religious rules and spiritual effects of marriage, while the civil law defines the civil rules and temporal effects of the contract.

A minister of the church who celebrates a marriage contrary to the requirements of Article 1058 of the Civil Code incurs criminal penalties.

Marriage between Portuguese subjects who are non-Catholics is recognized as producing full civil effects.

CONSANGUINITY AND AFFINITY.—The following persons are forbidden to marry each other:

1. Ascendants and descendants.

2. Persons related collaterally in the second degree.

3. Males who have not completed their fourteenth year and females who have not completed their twelfth year of age.

4. Persons already bound by marriage.

Any infraction of these prohibitions makes a marriage voidable.

MARRIAGE PRELIMINARIES.—Whoever desires to contract marriage according to the manner provided by the civil law of the land must present to the civil officer of the State acting in the place of the applicant's domicile a declaration setting forth:

1. The full names, ages, occupations and domiciles of the contracting parties.

2. The full names, professions and domiciles of the parents.

Upon receiving this declaration the civil officer publishes a notice of the intended marriage and informs all interested persons to file their objections, if any exist, within fifteen days. If at the end of this period no valid objection to the mar-

riage has been formulated the civil officer proceeds to the celebration of the marriage.

CELEBRATION.—For the civil celebration of marriage the contracting parties, or their duly empowered proxies, appear before the civil officer of the commune, attended by competent witnesses. If the marriage is celebrated in the official bureau of the commune two witnesses are sufficient; if outside of such bureau six witnesses are required.

Any civil officer celebrating a marriage contrary to these provisions incurs penal punishment.

ANNULMENT OF MARRIAGE.—A Catholic marriage —that is, one solemnized according to the canonical law—can only be annulled by an ecclesiastical tribunal and according to the laws of the Catholic Church enforceable in Portugal.

A sentence of an ecclesiastical tribunal annulling a marriage is executed by the civil authority of the land.

A marriage concluded before a civil officer in the form established by the civil law of the land can only be annulled by a civil court.

JUDICIAL SEPARATION.—A separation of the person and goods may be had for the following causes:

1. Adultery of the wife.

2. Adultery of the husband, if such adultery creates a public scandal or if the husband brings his concubine into the home he has established for his wife.

3. Sentence of one of the spouses to life imprisonment.

4. Cruel and abusive treatment.

DIVORCE.—Under the law of Portugal as it existed down to the day when King Manuel II. was dethroned and a Republic declared there was no such thing as divorce recognized. Portugal has been for centuries a Catholic country, and the decrees of

the Council of Trent, as well as all the other rules and regulations concerning marriage stated by the Catholic Church, have been accepted by Portugal as part of the law of the land. However, since December 1, 1910, when the present provisional government was constituted, certain new laws have been promulgated by government decree. One of these new laws relates to divorce and is most modern and radical in its scope. It permits the courts to grant absolute divorces for a number of reasons, including "mutual consent of the parties."

Whether such laws, created by proclamation instead of legislation, will be incorporated into the inevitable new Civil Code of Portugal is a problem for the future. Our endeavour in this chapter has been to state the organic law of Portugal as it at present exists, untouched by legislation on the statute books of that ancient land.

CHAPTER XX.

ROUMANIA.

Roumania is the name officially adopted by the united kingdom that comprises the former principalities of Walachia and Moldavia. In its native form it appears simply as "Roumania," representing the claim to Roman descent put forward by its inhabitants.

The Roumanian Civil Code from which we summarize in this chapter the law of marriage and divorce of Roumania is practically a copy of the French Civil Code.

MARRIAGE.—A man must be eighteen years of age and a woman fifteen in order to contract lawful marriage, except a dispensation is granted by the King.

The free consent by both contracting parties is essential.

Men under twenty-five years of age and women under twenty-one cannot marry without the parental consent. Men under the age of thirty and women under the age of twenty-five are obliged to ask the consent of their parents.

A man or woman is allowed but one spouse at a time.

CONSANGUINITY AND AFFINITY.—Marriage is forbidden between relatives, whether by blood or by marriage, in the direct line, and in the collateral line to the fourth degree, inclusive, by the Roman method of counting. The prohibition obtains whether the relationship arises from legitimate or illegitimate birth. A dispensation from such impediments may, in special cases, be granted by the King.

Marriage is forbidden between relatives by

adoption and between godparents and their godchildren.

Marriage is forbidden between guardians and wards, or between trustees and wards, and the father, son or brother of a guardian or trust cannot marry the ward until the accounts of the guardianship or trust have been properly audited and settled.

Soldiers cannot marry without the consent of the military authorities.

Marriage is expressly forbidden to priests, monks and nuns.

Divorced persons are forbidden to remarry each other.

A woman whose marriage has been dissolved by death or divorce may not marry again until the expiration of ten months after such dissolution.

MARRIAGE PRELIMINARIES.—A marriage must be preceded by the publication of the names, occupations and residences of the parties themselves, and of their parents, on two Sundays before the celebration. Such publication of banns must be made before the door of the parish church and the door of the town hall of the commune where the marriage is to be concluded. The marriage cannot be solemnized until the fourth day after the second publication of banns. If a year passes after such publication without marriage a new publication is necessary. If, upon the publication of banns, the intended marriage is opposed, as it may be, by any person, the registrar of the commune must defer the celebration of marriage until the opposition has been withdrawn or overruled.

CELEBRATION.—The marriage must be celebrated by the registrar in the town hall of the commune in which one of the parties had had continuous residence for at least six months. The registrar, in the presence of four witnesses, reads to the

parties that chapter of the Civil Code of Roumania which defines the rights and duties of marriage. The parties must then declare to the registrar their intention to marry each other. After this the officiating registrar pronounces the parties to be husband and wife.

If a religious celebration is desired it must in all cases be preceded by the civil ceremony.

ANNULMENT OF MARRIAGE.—A marriage may be annulled on any of the following grounds:

1. That it was not regularly celebrated before a registrar.
2. That free consent of one or both parties did not exist.
3. Lack of proper age.
4. An existing marriage.
5. Relationship within prohibited degrees.
6. Lack of parental consent.
7. In the case of a soldier, lack of proper consent from the necessary military authorities.

Where a marriage has been contracted in good faith the parties thereto and the issue of the marriage are entitled to all civil rights resulting therefrom; but if only one party was in good faith, only that party and the issue of the marriage are entitled to these rights.

DIVORCE.—The great majority of the people of the kingdom belong to the Roumanian branch of the Orthodox Greek Church, which in practice does not hold to the doctrine of the indissolubility of marriage.

The law of the land permits absolute divorce for the following causes:

1. By mutual consent of the parties. The parties on such an application appear before a judge with a written inventory of their goods, showing the division agreed upon, and with certificates of their birth and marriage, of the births

and deaths of their children, and, when necessary, the consent of their parents.

The judge then endeavours to reconcile the parties. If at the end of one year and fifteen days no reconciliation has been effected a divorce is granted.

2. Adultery of husband or wife.

3. Cruel and abusive treatment of one spouse toward the other.

4. A judicial condemnation of either party to a prison sentence for an infamous crime.

5. An attempt of one party on the life of the other.

6. Intentional omission of one spouse to warn the other of an attempt by a third person on the life of the other spouse.

SEPARATION.—Judicial separations are not granted by the courts of Roumania.

EFFECTS OF DIVORCE.—Divorced parties are forbidden to remarry each other.

A divorced woman may not marry again within ten months after her divorcement, and the guilty party in a suit for divorce on the ground of adultery may not marry his or her accomplice in adultery.

Otherwise divorced parties are free to marry again.

A divorced woman may not retain her husband's surname.

All property rights granted by the innocent party to the guilty party are extinguished by the decree of divorce. The guilty party may be ordered to contribute to the support of the innocent party.

The custody of the children is usually given to the successful suitor. The court may, however, if circumstances require, entrust the children to the guilty party or to a third person.

CHAPTER XXI.

SERVIA.

Servia is a kingdom in the northwestern part of the Balkan Peninsula. In 1882 it became a constitutional monarchy. The judiciary is vested in a High Court of Appeal, a Court of Cassation, a Commercial Court and twenty-three courts of the first instance.

The Servian laws of marriage and divorce are substantially the same as those of the Orthodox Greek Church. All marital suits in which one or both parties belong to this church are governed by State law, although jurisdiction lies with the ecclesiastical courts. Matters pertaining to property settlement are, however, entirely within the jurisdiction of the civil courts, as are all marital suits in which neither party belongs to the Greek Church.

When the parties to a marital suit are Roman Catholics decisions are rendered according to the canon law; and when both parties are Protestants, according to the principles of the sect to which the parties belong.

In the case of a mixed marriage of others than adherents of the Greek Church the decision is rendered according to the principles of the church in which the marriage was celebrated.

MARRIAGE QUALIFICATIONS.—A man cannot marry until he has completed his seventeenth year; a woman until she has completed her fifteenth year of age. By the dispensation of the church, granted by a bishop, a man of fifteen years or a woman of thirteen years may conclude marriage.

The free consent of both parties is essential to a valid marriage.

If both the contracting parties are over eighteen years of age parental consent to a marriage is not obligatory. Where both parties are under eighteen years, or the intended bride is under that age and the intended bridegroom is under twenty-one years, the consent of parents is necessary.

All persons are forbidden to contract a new marriage until a previous existing marriage has been dissolved or judicially declared a nullity.

CONSANGUINITY AND AFFINITY.—Marriage is prohibited between relatives by blood in the direct line and in the collateral line as far as the eighth degree, inclusive—that is to say, as far as the degree of relationship of third cousins. Relatives in the seventh or eighth degree may marry by episcopal dispensation. Marriage is prohibited between relatives by marriage as far as the fifth degree, inclusive.

Marriage is prohibited between persons spiritually related, as between the godparent and the godchild or his descendants.

IMPEDIMENTS.—Persons who have been judicially condemned for adultery are forbidden to contract marriage with their accomplices in the offence.

The party declared guilty in a suit for divorce is prohibited from marrying again during the lifetime of the innocent party.

A woman may not, as a rule, marry again until nine months after the dissolution by death or divorce of her previous marriage.

Insane persons cannot contract a binding marriage.

Incurable impotence of either party, which existed at the time the marriage was concluded, is cause for a decree of nullity.

Marriage is expressly forbidden between Christians and Jews or between Christians and non-Christians of any sect whatever.

Marriage is prohibited between two persons one of whom has attempted the life of the husband or wife of the other.

A lawful marriage cannot be concluded with a woman who has been abducted and has not yet been restored to freedom.

Marriage cannot be concluded by a person who is under sentence to imprisonment.

PRELIMINARIES.—Before the marriage the parish priest must, on three successive holy days, publish banns in the church, and if any member of the parish knows of any impediment it is his or her duty to inform the priest. If a priest fails thus to publish banns, and impediments later appear, he is amenable to punishment.

CELEBRATION.—The law of Servia does not recognize a civil marriage. If the parties, or one of them, belong to the Orthodox Greek Church they must be married according to the rites of that church. Christians of other sects must be married by their clergy and Jews by their authorized ministers.

CHILDREN.—Marriage of the parents subsequent to their birth renders illegitimate children fully legitimate.

ANNULMENT OF MARRIAGE.—A marriage may be declared null by a decree of a court of competent jurisdiction whenever it appears that some essential qualification to make the marriage valid was absent at the time it was concluded, or if it appears that the marriage was concluded in disregard of the impediments stated by law.

ABSOLUTE DIVORCE.—A complete divorce from the marriage bond is allowed by the courts for the following causes:

1. Adultery of either party.
2. Attempt by either spouse to kill the other.
3. The concealment by one spouse of information concerning a plot to kill the other spouse.
4. Penal servitude incurred by either spouse, under a sentence of at least eight years.
5. Apostasy from the Christian religion.
6. Deliberate desertion persisted in for three years.
7. Flight from Servia followed by absence of at least four years.
8. Absence without news for six years.

A decree of divorce or a decree annulling a marriage must always be submitted for the approval or disapproval of the ecclesiastical courts.

EFFECTS OF DIVORCEMENT.—The innocent party to a divorce suit may contract a new marriage, but the guilty party is forbidden to remarry during the lifetime of the innocent party.

Usually each party regains such goods and effects as he or she brought to the alliance.

CUSTODY OF CHILDREN.—Boys under four years and girls under seven are given, as a rule, to the mother's custody. After that they are given to the custody of the father.

The divorced woman must not continue to use the surname of her ex-husband.

JUDICIAL SEPARATION.—A separation from bed and board may be granted by the court whenever the facts show such a decree to best promote the interests and well-being of the spouses.

CHAPTER XXII.

Bulgaria.

The national religion of the Bulgarian people is that of the Orthodox Greek Church, and consequently the laws of that church on the subject of marriage and divorce is part of the organic law of Bulgaria.

Upon the political independence of the country the Bulgarian Church, which had hitherto been under the Patriarchate of Constantinople through an exarch, declared its independence and established the Bulgarian Exarchate. The ecclesiastical courts of this Exarchate have general jurisdiction of matrimonial causes except as concern Mohammedans, Jews, and Christians who are not adherents of any of the Eastern Orthodox churches.

Besides the laws of the Church, Bulgaria has a national law of marriage and divorce dating from 1897.

The matrimonial concerns of Mohammedans are governed by the law of the religion of Mohammed. Christians who are dissenters from the Orthodox Church are permitted to marry according to the rules and regulations of their sect.

Requirements for Marriage.—The marriageable age for men begins with twenty years, and for women with eighteen years.

Parental consent is required, but if it is arbitrarily denied the authorities of the church may give their consent in its stead.

A man or woman is permitted to have but one spouse at a time.

Consanguinity and Affinity.—Marriage is forbidden between ascendants and descendants. In

the collateral line marriage is forbidden between persons related within the seventh degree. Under this rule a person cannot lawfully marry the child of his or her second cousin. The ecclesiastical authorities may upon such grounds as to them may seem sufficient grant a dispensation permitting a marriage within the prohibited degrees.

Marriage is also prohibited between godparents and godchildren, and between godchildren who have the same godparent. Here also the clergy may remove the impediment by dispensation.

Persons suffering from idiocy, insanity, epilepsy or syphilis cannot contract lawful marriage.

Marriage is forbidden when the parties are of different religious faiths.

A person under obligation by religious vow to remain celibate or one who has been sentenced to a state of celibacy by an ecclesiastical court cannot conclude marriage.

Accomplices in adultery may not marry each other. Persons in the military service must obtain the consent of their superiors to contract marriage.

Celebration.—The law of Bulgaria does not permit a civil marriage. If both or one of the contracting parties are baptized members of the Orthodox Greek Church, the marriage service must be in accordance with the rites of that church. Christians who belong to other churches are permitted to be married by the ministers of their faith. Three weeks at least must intervene between the betrothal and the wedding. All marriages must be preceded by the publication of banns.

Foreign Marriages.—The law of Bulgaria does not recognize the foreign marriage of Bulgarian subjects unless the following elements are present:

1. The foreign marriage must comply with all the laws and rules of the foreign country where it is concluded.

2. If the parties are baptized members of the Orthodox Greek Church the marriage must be solemnized by a priest of that church. This rule applies even though in the country where the marriage was concluded a civil ceremony is sufficient.

Divorce.—The Church and State both permit absolute divorces. The causes are:

1. Adultery of either spouse.
2. Drunkenness and disorderly conduct.
3. Cruel and abusive treatment.
4. Threat to kill.
5. Incurable impotence.
6. Absence of the husband for four years coupled with failure to support wife.
7. Sentence to prison for an infamous offense.
8. False accusation of adultery.
9. Wife's desertion of the husband continued for three years.

Divorce Procedure.—As before stated the suit for divorce must be brought before the ecclesiastical court.

Effects of Divorce.—If the guilty party is the wife, her husband has the right to retain all her dowry which she brought to him, and to retake all gifts made to her either before or after marriage.

If the guilty party is the husband, the wife has the right to recover her dowry, to keep any present she ever received from the husband, and to exact suitable maintenance from her divorced husband until such time as she remarries.

The custody of the children is given to the winning suitor, except that children under five years remain in the care of their mother.

CHAPTER XXIII.

The Kingdom of Greece.

Because of its matchless philosophy, literature and art, ancient Greece is still the marvel of the modern world, but little credit is given to old Hellas as one of the principal sources of the jurisprudence of to-day. For political reasons the Roman law was the overshadowing and dominating system of ancient law, but the fountain head of the laws of Rome, even of the Laws of the Twelve Tables, was the land of Demosthenes, Pericles, Solon and Lycurgus.

The great jurisconsults of the Roman Empire were not Roman but Greek lawyers, not the least of whom was Gaius, the legal commentator who was the Blackstone of his period.

The Roman Empire was the physical expression of Grecian intellect. Not only the first lawyers but the first popes of Rome were Greeks.

The modern Kingdom of Greece has an excellent system of jurisprudence based on the old Roman law, with modifications drawn from the Bavarian and French. The commercial law has been adapted from the *Code Napoleon,* the penal laws are of Bavarian origin, and the laws of marriage and divorce are derived from the Roman law necessarily modified to harmonize with the dogmas of the Orthodox Greek Church, which is the national church of the kingdom.

The Areopagus existed in Greece as a court of justice before the first Messenian war, 740 B. C. This court was situated on the Hill of Ares outside the city of Athens, the very "Hill of Mars" on which St. Paul preached in the year

A. D. 52. We find historical mention of the Court of Areopagus as late as the year 880 of the Christian Era. It is unlikely that the Areopagus of to-day, which is the supreme court of appeal in modern Greece, has any other relationship than the same venerable name with the court of ancient times.

Besides the Court of the Areopagus, there are four other inferior courts of appeal, one for each of the judicial districts of Greece. There are also four commercial tribunals, seventeen courts of first instance, and over two hundred justices of the peace. The standard of the Grecian judiciary is very high, for only men of unblemished reputation who have received the degree of doctor of law from a reputable European university are eligible to the bench.

There is no *habeas corpus* act in Greece, but no one can be arrested, no house can be entered, and no letter opened without a judicial warrant.

The supreme power of the Church of Greece is vested in the Holy Hellenic Synod which consists of five members, who are appointed annually by the King, and the majority of whom must be prelates. The Metropolitan Archbishop of Athens is *ex-officio* president; two royal commissioners attend without voting and the Synod's resolutions require to be confirmed by them in the King's name. In all purely spiritual matters the Synod has entire independence; but on questions having a civil side, such as marriage and divorce, it can only act in concert with the civil authorities.

The Orthodox Greek Church as a matter of dogma treats marriage as a sacrament or divine ordinance, but unlike the Latin Church, it holds that for sufficient cause marriage may be legally dissolved, but not till a probationary period has

elapsed during which a bishop or priest mediates with the purpose of reconciling the parties.

MARRIAGE.—Both by the law of the land and the church law, marriage in Greece is treated as a social status which can only be concluded by a religious celebration. A civil ceremony has no validity. If both the parties or one of them are baptized members of the Orthodox Greek Church, the marraige must be celebrated before a priest and in accordance with the laws and rites of that church.

When both of the parties are Roman Catholics they must be married by a priest of their religion. If one of the parties is a Roman Catholic and the other a member of the Orthodox Greek Church, the marriage must be solemnized by a priest of the latter church. The rule is that mixed marriages must be solemnized by a priest of the Greek Church.

Jews and Protestants may be married by the ministers of their respective denominations.

AGE.—The marriageable age of males begins at the completion of their fourteenth year, and that of females at the completion of their twelfth year.

CONSENTS.—The free consent of the contracting parties is essential. For a man under twenty-one years of age, or a woman under eighteen years of age, the parental consent is also necessary.

MONOGAMY.—All persons are forbidden to contract a new marriage until a previous marriage has been dissolved by death or divorce.

CONSANGUINITY AND AFFINITY.—Marriage is prohibited between persons of whom one is descended in a direct line from the other. Collateral kinsmen are forbidden to marry within the sixth degree. The degrees are counted according to the Roman law method of reckoning which counts

the number of descents between the persons on both sides from the common ancestor. The authorities of the national church may upon such facts as to them seem proper grant a dispensation allowing a marriage within the forbidden degrees.

Spiritual Relationship.—Marriage is expressly forbidden between godparents and their godchildren, and between godchildren who have the same godparent. A church dispensation is, however, easily obtained, relieving the parties from the last mentioned impediment.

Special Prohibitions.—Persons suffering from defective intellect, insanity, syphilis or epilepsy are forbidden to conclude marriage.

Persons under religious vows to remain celibate cannot conclude marriage unless dispensed from such vows.

Accomplices in adultery may not marry each other.

Persons in the military service may not conclude marriage without the consent of the higher military authority.

Priests.—A priest of the Orthodox Greek Church is required to marry once, but he cannot contract a second marriage even after the death of his first wife.

Fourth Marriage.—It is contrary to the law of the land as well as the law of the church for any person to contract a fourth marriage.

Banns.—All marriages must be preceded by the publication of banns.

Foreign Marriages.—The Greek courts will not recognize the foreign marriage of Greek subjects who are baptized members of the Orthodox Greek Church unless the marriage was solemnized before a priest of that church. This is the rule, even though in the country where the marriage was concluded a civil ceremony is sufficient and obligatory.

DIVORCE.—Absolute divorces are granted for the following causes:

1. Adultery of either husband or wife.
2. Cruel and inhuman treatment, endangering life or health.
3. An attempt by either spouse to kill the other.
4. Threat to kill.
5. The condemnation and imprisonment of either spouse for an infamous or degrading crime.
6. Confirmed habits of drunkenness.
7. Desertion.
8. Incurable impotence of either party.

PROCEDURE.—All suits for divorce must be instituted in the ecclesiastical courts of the Orthodox Greek Church.

EFFECTS OF DIVORCE.—Both parties are free to remarry, but the wife must wait until a full year has elapsed from the granting of a decree before contracting a new marriage.

The wife must not use the surname of her divorced husband.

If the wife is the successful suitor, she can recover from the defeated party the dowry she brought to him at marriage. She has a right also to retain any gifts she may have received from him either before or after marriage.

In some instances the husband is obliged to pay alimony to his divorced wife during her lifetime, up to the time she contracts a new marriage.

If the parties have children, such of them as are so young as to need a mother's care are temporarily awarded to the woman's custody even though she be the party declared to be guilty in the divorce suit.

CHAPTER XXIV.

The Mohammedan Law of Turkey, Persia, Egypt, India, Morocco and Algeria.

The laws of Mohammedanism which are founded on the Koran and the Traditions of Mohammed to-day constitute the civil and religious code of many millions of the world's inhabitants.

A country that is subject to the government of Mohammedans is termed *Dar-ool-Islam,* or a country of safety and salvation, and a country which is not subject to such government is termed *Dar-ool-hurb,* or a country of enmity. Though Mohammedans are no longer under the sway of one prince, they are so bound together by the common tie of Islam that as between themselves there is no difference of country, and they may therefore be said to compose but one *dar* or commonwealth.

A Mohammedan is subject to the law of Islam absolutely, that is without distinction of place or otherwise.

Every unbeliever in the Mohammedan religion is termed a *kafir,* or infidel, and infidels who are not in subjection to some Mohammedan state are generally treated by Islamic lawyers as *hurbees,* or enemies.

The Mohammedans are taught to believe that their system of jurisprudence is of divine origin, is incapable of improvement, and can never be changed in any material particular. The fact is that with all its alleged source, perfection and immutability Mohammedan law has not been able to escape the inevitable rule of change which seems to affect everything and everybody in this world.

There are certain countries where the entire legal and religious system is based on the laws of Mohammedanism; such countries are: Turkey, Persia and Morocco. There are other countries, such as Egypt, India and Algeria, where the law of Islam operates side by side with other legal systems.

In India there are four distinct systems of jurisprudence, all in full operation and effect. These are:

1. English law created by the British Parliament.

2. Anglo-Indian law, which is created in India by the Legislative Councils of the British Government.

3. Hindu law, which applies to every one in British India who is a Hindu, and to no one else.

4. Mohammedan law, which applies to every one in British India who is a Mohammedan, and to no one else.

If a Mohammedan in India abandons his religion he ceases to be governed by Mohammedan law.

Since the promulgation of the Regulations of Warren Hastings in 1772, all suits in British India regarding inheritance, marriage, caste and other religious usages and institutions with respect to Mohammedans have been decided invariably according to Mohammedan law.

EGYPT.—There are four kinds of legal tribunals in Egypt, namely:

1. The Native Courts, which have civil and criminal jurisdiction over natives.

2. The Consular Courts, which have jurisdiction over foreigners charged with crime.

3. The Mixed Tribunals, which have civil and criminal jurisdiction over persons of diverse citizenship.

4. The Mohammedan Courts, which deal with the questions of the personal rights of the Mohammedan inhabitants according to the laws of Islam.

As over ninety *per centum* of the people of Egypt are Mohammedans, the importance of the Mohammedan Courts is apparent.

The Mohammedan law of marriage and divorce is also recognized as controlling and effective when the parties to a marriage are Mohammedans, in Russia, Roumania, Servia, Bulgaria and Greece.

MARRIAGE.—Marriage is enjoined on every Mohammedan, and celibacy is frequently condemned by Mohammed. "When the servant of God marries, he perfects half of his religion," said the Prophet. Once Mohammed inquired of a man if he was married, and being answered in the negative, he asked, "Art thou sound and healthy?" When the man answered that he was the Prophet angrily said, "Then thou art one of the brothers of the devil."

VALIDITY OF MARRIAGE.—Marriage, according to Mohammedan law, is simply a civil contract, and its validity does not depend upon any religious ceremony. Though the civil contract is not required to be reduced to writing, its validity depends upon the consent of the parties, which is called "*ijab*" and "*gabul*," meaning declaration and acceptance; the presence of two male witnesses (or one male and two female witnesses); and a dower of not less than ten *dirhams* to be settled on the woman. The omission of the settlement does not, however, invalidate the contract, for under any circumstances, the woman becomes entitled to her dower of ten *dirhams* or more.

It is a recognized principle that the capacity of each of the parties to a marriage is to be judged of by their respective *lex domicilii*.

The capacity of a Mussulman domiciled in

England will be regulated by the English law, but the capacity of one who is domiciled in the *Belâd-ul-Islâm,* or Mohammedan country, by the provisions of Mohammedan law.

We are told by the highest authorities on Islamic law that the three principal conditions which are requisite for a proper marriage are: understanding, puberty and freedom in the contracting parties.

The Mohammedan law fixes no arbitrary age at which either male or female is competent to marry.

Besides understanding, puberty and freedom, the capacity to marry requires that there should be no legal disability or bar to the union of the parties; that in fact they should not be within the prohibited degrees of relationship.

Legal Disabilities.—There are nine prohibitions to marry, namely:

1. Consanguinity, which includes mother, grandmother, sister, niece and aunt.

2. Affinity, which includes mother-in-law, step-grandmother, daughter-in-law and step-granddaughter.

3. Fosterage. A man cannot marry his foster-mother, nor foster-sister, unless the foster-brother and sister were nursed by the same mother at intervals widely separated. But a man may marry the mother of his foster-sister, or the foster-mother of his sister.

4. Sister-in-law. A man may not marry his wife's sister during his wife's lifetime, unless she be divorced.

5. A man married to a free woman cannot marry a slave.

6. It is not lawful for a man to marry the wife or *mu'taddah* of another, whether the *'iddah* be on account of repudiation or death. That is,

he cannot marry until the expiration of the woman's *'iddah,* or period of probation.

7. A Mohammedan cannot marry a Polytheist, but he may marry a Christian, Jewess, or a Sabean.

8. It is not lawful for a man to marry his own slave, or a woman her bondsman.

9. If a man pronounces three divorces upon a wife who is free, or two upon a slave, she is not lawful to him until she shall have been regularly espoused by another man, who having duly consummated the marriage, afterwards divorces her, or dies, and her *'iddah* from him be accomplished.

In the *Korân* or *El-Kor'an* we find in the chapter on women (Sura IV.) the law expressed as to certain prohibitions:

"Forbidden to you are your mothers, and your daughters, and your sisters, and your aunts, both on the father's and mother's side, and your nieces on the brother's and sister's side, and your foster-mothers, and your foster-sisters, and the mothers of your wives, and your stepdaughters who are your wards, born of your wives to whom you have gone in: (but if ye have not gone in unto them, it shall be no sin in you to marry them) and the wives of your sons who proceed out of your loins; and ye may not have two sisters; except where it is already done. Verily, God is Indulgent, Merciful!"

Polygamy. — According to Mohammedanism polygamy is a divine institution, and has the express sanction of the law. Mohammed restrained the practice of polygamy by limiting the maximum number of contemporaneous marriages, and by making absolute equity toward all obligatory on the man. A Mohammedan may marry four wives but no more. The law is thus stated: "You may marry two, three, or four wives, but not more.

However, all true believers are enjoined that, "if you cannot deal equitably and justly with all you shall marry only one."

In India more than ninety-five *per centum* of the Mohammedans are at the present, either by conviction or necessity, monogamists. In Persia only two *per centum* of the population enjoy the questionable luxury of plurality of wives.

Celebration of Marriage.—The *Nikah*, or celebration of the marriage contract, is preceded and followed by festive rejoicings, which have been variously described by Oriental travellers, but they are not parts of either the civil or religious ceremonies. The Mohammedan law appoints no specific religious ceremony, nor are any religious rites necessary for the contraction of a valid marriage. Legally, a marriage contracted between two persons possessing the capacity to enter into the contract is valid and binding, if entered into by mutual consent in the presence of witnesses. As a matter of practice a Mohammedan marriage is generally concluded by a formal ceremony which is ended by the *Qazi* offering the following prayer:

"O Great God! grant that mutual love may reign between this couple, as it existed between Adam and Eve, Abraham and Sarah, Joseph and Zalikha, Moses and Zipporah, his highness Mohammed and Ayishah, and his highness Ali al-Murtaza and Fatimatu'z-Zahra."

Husband and Wife.—A husband is not guardian over his wife any further than respects the rights of marriage, nor does the provision for her rest upon him any further than with respect to food, clothing and lodging.

A husband must reside equally with each of his wives, unless one wife bestow her right upon another wife.

A wife cannot give evidence in a court of law against her husband. If she becomes a widow she must observe mourning for the space of four months and ten days.

In the event of her husband's death a wife is entitled to a portion of her husband's estate, in addition to her claim of dower, the claim of dower taking precedence of all other claims on the estate.

"The women," says the Koran, "ought to behave toward their husbands in like manner as their husbands toward them, according to what is just."

When the husband has left the place of conjugal domicile without making any arrangements for his wife's support, the judge is authorized by law to make an order that her maintenance shall be paid out of any fund or property which the husband may have left in deposit or in trust, or invested in any trade or business.

When a woman abandons the conjugal domicile without any valid reason, she is not entitled to maintenance from her husband.

The Mohammedan law lays down distinctly that a wife is bound to live with her husband, and to follow him wherever he wishes to go; and that on her refusing to do so without sufficient or valid reason, the courts of justice, on a suit for restitution of conjugal rights by the husband, would order her to live with her husband.

The obligation of the wife, however, to live with her husband is not absolute. The law recognizes circumstances which justify her refusal to live with him.

Although the condition of women under Mohammedan law is most unsatisfactory, it must be admitted that Mohammed effected a vast and marked improvement in the condition of the female

population of Arabia. Amongst the Arabs who inhabited the peninsula of Arabia the condition of women was extremely degraded, for amongst the pagan Arabs a woman was a mere chattel. The Koran created a great reformation in the condition of women. For the first time in the history of Oriental legislation the principle of equality between the sexes was approached.

Divorce.—The Mohammedan law of divorce is founded upon express injunctions contained in the Koran, as well as in the Traditions, and its rules occupy an important part of all Mohammedan works on jurisprudence.

These rules may be summarized thus:

The thing which is lawful but disliked by God is divorce.

A husband may divorce his wife without any misbehaviour on her part, or without assigning any cause.

There is an irregular form of divorce in which the husband repudiates his wife by three sentences, either express or metaphorical, as for example: "Thou art divorced! Thou art divorced! Thou art divorced!" The Mohammedan who thus divorces his wife is held in the *Hidayah* to violate the law, but the divorce is legal.

A sick man may divorce his wife, even though he be on his death-bed.

An agent or agents may be appointed by a husband to divorce his wife.

In addition to the will or caprice of the husband, there are also certain conditions which require a divorce.

The following are causes for divorce, but generally require to be ratified by a decree from the *Qazi* or judge:

1. *Jubb.* That is, when the husband has been by any cause deprived of his organ of generation.

This condition is called *majbub*, and if it existed before the marriage the wife can obtain instant divorce.

2. *Unnah.* Impotence of either husband or wife.

3. Inequality of race or tribe.

4. Insufficient dower. (If the stipulated dowry is not given when demanded.)

5. Refusal of Islam. If one of the parties embrace Islam, the judge must offer it to the other three distinct times, and if he or she refuse to embrace the faith, divorce follows.

6. Unjust accusation of adultery by a husband against his wife.

7. If a wife becomes the proprietor of her husband or the husband becomes the proprietor of his slave wife divorce takes place.

8. An invalid marriage of any kind, arising from consanguinity or affinity of parties, or other causes.

9. The executed vow of a husband not to have sexual intercourse with his wife for as long as four months.

10. Difference of country. As, for example, if a husband flee from a non-Moslem country to a country of Islam and his wife refuses to accompany him.

11. Apostasy from Islam.

The Greek Church holds that marriage is dissoluble in case of adultery, but not till a probationary period has elapsed during which a bishop or priest mediates with a view to reconciliation.

A fourth marriage is unlawful.

When a man or woman apostatizes from Islam, then an immediate dissolution of the marriage takes place, whether the apostasy be of the man or of the woman, without a judicial decree. If both husband and wife apostatize at the same

time, their marriage bond remains; and if at any future time the parties again return to Islam, no remarriage is necessary to constitute them man and wife.

There is a form of divorce known as *khula* which is when a husband and wife disagreeing, or for any other cause, the wife on payment of a compensation or ransom to the husband, is permitted by law to obtain from him a release from the marriage tie.

Mubara'ah is a divorce which is effected by mutual release.

A Comparison.—When compared with the Mosaic law it will be seen that by the latter, divorce was only sanctioned when there was "*some uncleanness*" in the wife, and whilst in Islam a husband can take back his divorced wife, in the law of Moses it was not permitted. See Deut. xxiv., 1-4.

Iddah or Iddat.—This is the term of probation incumbent upon a woman in consequence of a dissolution of marriage, either by divorce or the death of her husband. After a divorce the period is three months, and after the death of her husband four months and ten days, both periods being enjoined by the Koran.

Effects of Divorce:

1. Sexual intercourse between the divorced persons becomes unlawful.

2. The wife is free to marry another husband after the completion of her *iddah;* or immediately if the marriage was never consummated.

3. The husband may complete his legal number of four wives without counting the divorced one, or may marry a woman who could not be lawfully joined with the divorced one, for example, her sister, after the completion of her *iddah* but not before.

4. If the marriage has been consummated before the divorce, the whole of the unpaid dower becomes immediately payable by the husband to the wife, and is enforceable like any other debt if the marriage had not been consummated and the amount of dower was specified in the contract, he is liable for half that amount; if none was specified, he must give the divorced wife a present suitable to her rank, or their value. But the wife has no right to anything if the divorce took place by her wish, or in consequence of any disqualifications on her side, as for instance, her apostasy.

5. The wife is entitled to be maintained by her husband during the *iddah* on the same scale as before the divorce, conditionally on submitting to her husband's control as regards her place of residence and general behaviour. But on completion of her *iddah* she ceases to have any claim for maintenance.

CHAPTER XXV.

The United States of America.

The United States as such, that is, in its Federal capacity, has no single system of marriage and divorce laws applicable to all the States and Territories.

The purpose of the Constitution of the United States is to maintain by its federal structure a strong national government, while recognizing each of the States which make up the federation to be so far as is consistent with the motive of the Union, sovereign commonwealth.

When one considers this wonderful federation of States and Territories, with nearly half a hundred separate governments each making and interpreting its domestic laws, and yet all parts of, and working in harmony with, the central or Federal Government, the justice of Gladstone's tribute to the American Constitution as "the most wonderful work ever struck off at a given time by the brain and purpose of man" is apparent.

The laws of marriage and divorce in the various States and Territories cannot therefore be ascertained from a single legislative or judicial source. The law of the several jurisdictions consists not only of legislative enactments, but of judicial construction and interpretation of such legislation.

Fortunately the tendency is toward uniformity of legislation among the States, especially on the important subject of marriage and divorce, and such differences as exist are pointed out substantially in this chapter when each State or Territory is considered separately.

The Congress, or national legislature, has power to legislate only upon such subjects as the Federal Constitution marks out for it, and all powers not granted to the Federal government remain with the several States.

The regulation of marriage and divorce is one of the most important domestic concerns which remains within the jurisdiction of a State.

Article IV., Section 3, of the Constitution of the United States expressly grants to Congress exclusive power to prescribe laws for the Territories of the United States.

Just as each State has a separate judicial system so the Federal Government has its separate courts, which have no power to interfere with the proceedings or judgments of the State courts unless some principle of the Federal Constitution or a national law is challenged.

Essentials to Marriage.—There are three requisites to a lawful marriage in all of the States and Territories of the United States. These are:

1. First, that the marriage is *monogamous.* That is, the Federal courts and the courts of the several States only recognize as a true marriage one which in addition to being valid in other respects is a voluntary union of one man and one woman for life to the exclusion of all others.

2. The parties must be competent according to the *lex loci contractus,* or the law where the contract was concluded.

3. There must be free consent on the part of both of the contracting parties.

Interstate Comity.—As Wharton points out in his "Conflict of Laws," marriage is not merely a contract but an international institution of Christendom.

Often complications arise out of some difference between the law of marriage and divorce in the

State where a marriage is concluded, or a divorce effected, and the law of the State where one or both of the parties may after the marriage or divorce acquire a domicile. The guiding rule in such cases is that if a marriage or divorce is valid in the State or Territory where it was concluded or effected, it is valid in all of the States and Territories of the United States.

Proof of Marriage.—There are various methods of proving the existence of a marriage.

Where the parties live together ostensibly as husband and wife, demeaning themselves toward each other as such, and are received into society and treated by their friends and relations as having and being entitled to that status, the law will, in favour of morality and decency, presume that they have been legally married. This is the rule accepted with but slight qualifications in all of the States. The cohabitation of the parties coupled with the general reputation of being husband and wife is, however, at the best *prima facie* evidence sufficient for the purposes of a civil suit. In criminal prosecutions for adultery or bigamy, marriage is a necessary ingredient of the offence, and must be directly established.

Proof of Marriages Abroad.—In the absence of special statutes requiring a marriage abroad, or in another State to be proven in a particular manner, a foreign marriage can only be established by authenticated copies of the original records, or by proving as a matter of fact what the legal requirements for marriage are in the other country or State, together with proof that such requirements have been complied with. Of course, it is always necessary to identify the parties to any record.

Consanguinity and Affinity.—By an Act of Congress applicable to all the Territories marriage

within and not including the fourth degree of consanguinity computed according to the civil law is forbidden. This is with but slight variation the rule adopted by each of the States.

Sources of Law.—The laws of marriage in the several States and Territories originate from the law on that subject as it existed in England at the time of the adoption of the Federal Constitution, as subsequently modified by State legislation and local judicial interpretation.

The law of divorce as it exists in the several States is entirely of local creation.

In the remainder of this chapter each State and Territory of the United States and the District of Columbia is considered separately.

Alabama.

Marriage.—The marriageable age for males begins at 17 years and for females at 14 years of age.

Males under twenty-one years and females under eighteen years require the consent of their parents to lawfully conclude marriage.

The essence of marriage which is considered as a civil contract is the free consent of both parties.

Impediments.—The son must not marry his mother or stepmother, or the sister of his father or mother, or the widow of his uncle. The brother must not marry his sister or half-sister, or the daughter of his brother or half-brother, or of his sister or half-sister. The father must not marry his daughter or granddaughter, or the widow of his son. No man shall marry the daughter of his wife, or the daughter of the son or daughter of his wife; and all such marriages are declared incestuous.

Forbidden Marriages. — Bigamous marriages; incestuous marriages; miscegenation — between

blacks and whites; and marriage of a female compelled by menace, force or duress. Such marriages involve a criminal prosecution.

CELEBRATION.—A marriage may be concluded before any regular minister of religion, any judge of a court of record, or a justice of the peace.

CAUSES FOR ABSOLUTE DIVORCE:

1. Impotency.
2. Adultery.
3. Voluntary abandonment from bed and board for two years.
4. Imprisonment in the penitentiary for two years, the sentence being for seven years or longer.
5. The commission of the crime against nature.
6. Habitual drunkenness.
7. In favour of the husband, when the wife was pregnant at the time of marriage without his knowledge or agency.
8. In favour of the wife, when the husband has committed actual violence on her person attended with danger to life or health, or when from his conduct there is reasonable apprehension of such violence.

LIMITED DIVORCES.—Decrees of separation from bed and board are granted to either spouse on the ground of cruelty.

REMARRIAGE.—On February 13, 1903, an act was approved making it unlawful for either party to marry again after a decree of divorce has been granted, until after the expiration of the time allowed for taking an appeal (sixty days from the date of the decree), as well as during the pendency of an appeal, if one is taken.

ALASKA.

In the Territory of Alaska marriage is deemed a civil contract.

Marriages may be solemnized before a qualified clergyman, judge or magistrate.

Marriage is forbidden between persons who are related to each other within, but not including, the fourth degree of consanguinity. These degrees are computed according to the rules of the Roman Law.

DIVORCE.—The following are legal causes for an absolute divorce: Impotency existing at the time of marriage and continuing to the commencement of the suit; adultery; conviction of felony; wilful desertion continued for the period of two years, or more; cruel and inhuman treatment calculated to impair health or endanger life; and gross and habitual drunkenness.

ARIZONA.

MARRIAGE.—In this newly admitted State marriage is treated as a purely civil contract.

A male must be at least eighteen and a female at least fourteen years of age to lawfully contract marriage.

The consent of the parents is required in the case of males under 21 and females under 18.

CONSANGUINITY AND AFFINITY.—All marriages between parents and children, including grandparents and grandchildren of every degree; between brothers and sisters of the half as well as the whole blood; between uncles and nieces, aunts and nephews; and between first cousins are declared to be incestuous and void.

The preceding paragraph extends to illegitimate as well as legitimate children and relations.

NEGROES, MONGOLIANS AND INDIANS.—Marriage between whites and negroes, between whites and Mongolians, or between whites and Indians are absolutely void.

PRELIMINARIES.—A marriage license is required.

CELEBRATION.—Marriage may be concluded before any minister of the Gospel, judge of a court of record, or justice of the peace.

CAUSES FOR ABSOLUTE DIVORCE:

1. When adultery has been committed by either husband or wife.
2. When one of the parties was physically incompetent at the time of marriage.
3. When the husband or wife is guilty of excesses, cruel treatment, or outrages toward the other.
4. In favour of the husband, when the wife shall have voluntarily left his bed or board for the space of six months with the intention of abandonment.
5. In favour of the wife, when the husband shall have left her for six months with the intention of abandonment.
6. For habitual intemperance.
7. Wilful neglect to provide for his wife the necessaries and comforts of life for six months.
8. When the husband shall have been taken in adultery with another woman.
9. In favour of either husband or wife, when the other shall have been convicted, after marriage, of a felony, and imprisonment in any prison.

ARKANSAS.

The minimum age for marriage is 17 for males; 14 for females.

Parental consent is required for males under 21 years and females under 18 years of age.

The prohibited degrees are the same as in Alabama.

CAUSES FOR ABSOLUTE DIVORCE:

1. Impotency.

2. Desertion for one year.
3. Previous existing marriage.
4. Conviction of felony or infamous crime.
5. Habitual drunkenness continued for one year.
6. Cruel and barbarous treatment endangering life.
7. Indignities which render condition and cohabitation intolerable.
8. Adultery.

LIMITED DIVORCE.—Limited divorces are granted for the same causes.

CALIFORNIA.

MARRIAGE.—Marriage is defined as a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization authorized by the code. A male must be at least eighteen and a female at least fifteen to conclude marriage.

Parental consent is required if the male is under twenty-one years or the female under eighteen years. Such consent is not required if the minor has been previously lawfully married.

IMPEDIMENTS.—Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews are incestuous and void, whether the relationship is legitimate or illegitimate.

Marriages between white persons and mulattoes or between white persons and Mongolians are prohibited.

CELEBRATION.—Marriages may be celebrated before any justice of the supreme court, any judge

of the superior court, any justice of the peace; or before a priest or minister of the Gospel of any sect.

HUSBAND AND WIFE.—A married woman may acquire, hold and control property of every description the same as a single woman.

DIVORCE.—The following are legal causes for an absolute divorce: Adultery; extreme cruelty; wilful desertion; wilful neglect; habitual intemperance; and conviction by either party of a felony.

All decrees of divorce are first granted *nisi*, and an absolute or final decree cannot be secured until one year after the entry of the decree *nisi*.

Marriages may be annulled on the following grounds: That the party petitioning for annulment was under age at the date of marriage; that the former husband or wife of either party was living and the former marriage undissolved at the time of the marriage in question; that one of the parties was of unsound mind when the marriage was concluded; that the marriage was procured by fraud; that the marriage was procured by coercion; that at the time of the marriage one of the parties was impotent, and such physical incapacity continues to the date of bringing the suit for annulment.

COLORADO.

MARRIAGE.—Marriage is a civil contract. The minimum marriageable age for males and for females has not been fixed by statute.

Parental consent is required for males under 21 years or for females under 18 years.

IMPEDIMENTS.—All marriages between parents and children, including grandparents and grandchildren, of every degree; between brothers and

sisters of the half as well as of the whole blood; and between uncles and nieces and aunts and nephews are declared to be incestuous and void. This provision applies to illegitimate as well as to legitimate children.

The statute contains a provision that persons living in that portion of the State acquired from Mexico are permitted to marry according to the custom of that country.

No person can lawfully conclude marriage within one year after divorce.

Marriages are also forbidden between whites and negroes or mulattoes.

A marriage license is required.

ABSOLUTE DIVORCE:

1. Impotency.
2. A husband or wife living.
3. Adultery.
4. Desertion for one year.
5. Cruelty.
6. Failure to support for one year.
7. Habitual drunkenness for one year.
8. Conviction of felony.

DISTRICT OF COLUMBIA.

MARRIAGE.—A civil contract. The minimum age for males is 16 years, for females 14 years.

The consent of the father or mother is necessary in marriages of males under the age of twenty-one years, and of females under the age of eighteen years, unless the party under age has been previously lawfully married.

IMPEDIMENTS.—A man shall not marry his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's

daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter. A woman shall not marry her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's son, husband's daughter's son, brother's son, sister's son.

CELEBRATION.—Marriage may be solemnized before a judge of any court of record, or any justice of the peace, or by any minister or ordained person who has furnished proof of his official capacity to the Supreme Court of the District of Columbia.

Licenses to marry are issued by the clerk of the Supreme Court upon an affidavit showing that the contracting parties are competent and that all the requirements of law have been complied with.

DIVORCE.—There is only one cause for a divorce, namely, adultery. A judicial separation or divorce from bed and board may be granted because of cruelty, unjustifiable desertion or drunkenness.

Marriages procured by fraud or coercion, or between parties incapable by reason of insanity or non-age of concluding the contract, can be annulled.

Petitioners in matrimonial causes must have been bona fide residents of the District of Columbia before instituting proceedings.

CONNECTICUT.

MARRIAGE.—No age is fixed by statute at which minors are capable of contracting marriage.

The parents or guardians must give consent

in writing to the registrar before a license is issued if either party is a minor.

CONSANGUINITY AND AFFINITY.—No man shall marry his mother, grandmother, daughter, granddaughter, sister, aunt, niece, stepmother or stepdaughter; no woman shall marry her father, grandfather, son, grandson, brother, uncle, nephew, stepfather or stepson. All such marriages are declared to be incestuous.

CELEBRATION.—Any ordained clergyman of any State, any judge or justice of the peace may solemnize marriage. No special form of celebration is required.

ANNULMENT.—Whenever, from any cause, any marriage is void the superior court has jurisdiction, upon complaint, to pass a decree declaring it so.

LEGITIMACY OF CHILDREN.—Children born before marriage whose parents afterwards intermarry are deemed legitimate and inherit equally with other children.

DIVORCE.—The Superior Court has exclusive jurisdiction and may grant absolute divorce to any man or woman for the following offences committed by the other: Adultery, fraudulent contract, wilful desertion for three years with total neglect of duty, seven years' absence unheard from, habitual intemperance, intolerable cruelty, sentence to imprisonment for life, or any infamous crime involving a violation of conjugal duty and punishable by imprisonment in State prison.

Parties divorced may marry again.

There is no limited divorce recognized by the laws of Connecticut.

DELAWARE.

MARRIAGE.—While no age is fixed by statute as to when male or females may conclude mar-

riage, in case of a marriage under the age of 18 years for males and 16 years for females a divorce can be obtained for fraud for want of age, in the absence of voluntary ratification after reaching that age.

Parental consent is required for males under 21 years and females under 18 years.

IMPEDIMENTS.—Degrees of consanguinity: A man may not marry his mother, father's sister, mother's sister, sister, daughter or the daughter of his son or daughter. A woman may not marry her father, father's brother, mother's brother, brother, son, or the son of her son or daughter. Degrees of affinity: A man may not marry his father's wife, son's wife, son's daughter, wife's daughter, or the daughter of his wife's son or daughter. A woman may not marry her mother's husband, daughter's husband, husband's son, or the son of her husband's son or daughter.

Marriages between whites and negroes or mulattoes are prohibited.

CAUSES FOR DIVORCE.—They are adultery, bigamy, desertion for two years, habitual drunkenness for two years, extreme cruelty, or conviction after marriage of a crime, followed by continuous imprisonment for two years.

The causes for divorce from bed and board are the same, with the addition of one other, namely, hopeless insanity of the husband.

A marriage may be annulled for any of the following causes, existing at the time of the marriage: Incurable physical impotency; consanguinity; a former husband or wife living at the time of the marriage; fraud, force or coercion; insanity of either party; minority of either party, unless the marriage be confirmed after reaching proper age, to wit.: wife, 16 years; husband, 18 years.

Florida.

Marriage.—In order to be valid marriages must be celebrated before a qualified clergyman, judge, magistrate or notary public.

Parties must be of sound mind, and the male at least seventeen years of age and the female at least fourteen years of age.

Divorce.—Absolute divorce dissolving a marriage is granted by the courts for the following causes:

1. That the parties are within the degrees prohibited by law.
2. That the defendant is naturally impotent.
3. That the defendant has been guilty of adultery.
4. Extreme cruelty by defendant to complainant.
5. Habitual indulgence by defendant in violent and ungovernable temper.
6. Habitual intemperance of defendant.
7. Wilful, obstinate and continued desertion by defendant for one year.
8. That defendant has obtained a divorce in any other State or country.
9. That either party had a husband or wife living at the time of marriage.

Judicial separations or divorces from bed and board are not granted in Florida.

The petitioner called the complainant must have resided in the State two years, except where the defendant has been guilty of the act of adultery in the State, then any citizen of the State may obtain a divorce at any time, and the two years' residence shall not be required of complainant.

A suit of divorce is commenced by a bill in chancery, and the general chancery practice of the State is followed throughout.

A decree of divorce does not render illegitimate children born of the marriage, except in the case of a decree obtained on the ground that one of the parties had a previous spouse living at the time of the marriage.

Georgia.

Marriage.—The marriageable age for males begins at 17 years and for females at 14 years.

Females under 18 years of age require parental consent.

To be able to contract marriage, a person must be of sound mind, of legal age of consent, and labouring under neither of the following disabilities:

1. Previous marriage undissolved.
2. Nearness of relationship by blood or marriage.
3. Impotency.

To constitute an actual contract of marriage the parties must be consenting thereto voluntarily, and without any fraud practiced upon either.

Impediments.—Marriages between whites and persons of African descent are prohibited.

A man shall not marry his stepmother, or mother-in-law, or daughter-in-law, or stepdaughter, or granddaughter of his wife.

A woman shall not marry her corresponding relatives.

Marriage is forbidden between ascendants and descendants. Any marriage within the Levitical degrees is a criminal offense.

Celebration.—Marriage is a civil contract and no form of solemnization is prescribed by statute.

Divorce.—There are two forms of divorce in Georgia, a total divorce and a divorce from bed and board. The causes for total divorce are:

1. Intermarriage by persons within the prohibited degrees of relationship.

2. Mental incapacity at time of marriage.
3. Impotency at time of marriage.
4. Force, menaces, duress or fraud in obtaining marriage.
5. Pregnancy of wife at time of marriage, unknown to husband.
6. Adultery in either party after marriage.
7. Wilful and continued desertion for term of three years.
8. Conviction for an offense involving moral turpitude where penalty is two years or more in penitentiary.
9. In cases of cruel treatment, or habitual intoxication, jury may grant either total or partial divorce.

Idaho.

Marriage.—The marriageable age for males begins at 18 years and for females at the same age.

Impediments.—Marriage is prohibited between ascendants and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, whether the relationship is legitimate or illegitimate.

Marriage of whites with negroes or mulattoes is also prohibited.

A marriage license is required.

Celebration.—The law prescribes no particular form of solemnization, but the parties must declare in the presence of the celebrant that they take each other as husband and wife. Two witnesses must be present.

Causes for Absolute Divorce:

1. Adultery.
2. Extreme cruelty.

3. Wilful desertion for one year.
4. Wilful neglect for one year.
5. Habitual intemperance for one year.
6. Conviction of felony.
7. Permanent insanity.

There is no limited form of divorce recognized.

DEFENCES:

1. Collusion.
2. Condonation.
3. Recrimination.

ILLINOIS.

MARRIAGE.—To marry with parental consent, males must be at least 18 years and females 16 years of age; without such consent, males must be at least 21 years and females 18 years.

Marriage is a civil contract and may be celebrated before a qualified clergyman or magistrate.

IMPEDIMENTS.—Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as of the whole blood, between uncles and nieces, aunts and nephews, and between cousins of the first degree are declared to be incestuous and void. This includes illegitimate as well as legitimate children and relations.

CAUSES FOR ABSOLUTE DIVORCE:

1. When either party at the time of marriage was and continues to be naturally impotent.

2. When he or she had a wife or husband living at the time of such marriage.

3. When either party has committed adultery subsequent to the marriage.

4. When either party has wilfully deserted or absented himself or herself from the wife or husband, without any reasonable cause, for the space of two years.

5. When either party has been guilty of habitual drunkenness for the space of two years.

6. When either party has attempted the life of the other by poison or other means showing malice.

7. When either party has been guilty of extreme and repeated cruelty.

8. When either party has been convicted of felony or other infamous crime.

Limited divorces are not granted in this State.

Indian Territory.

The laws of marriage and divorce in the Indian Territory are the same as those of Arkansas, except in the matter of marriage impediments, and in a few minor details.

By an Act of Congress applicable to all Territories of the United States, marriages within and not including the four degrees of consanguinity, computed according to the civil law, are forbidden.

Indiana.

Marriage.—Males must be at least 18 years and females 16 years of age.

Marriage is a civil contract which can be celebrated before any qualified clergyman, judge or magistrate.

Impediments.—Marriages between ascendants and descendants, or being persons of nearer kin than second cousin, are prohibited.

A lawful marriage cannot be concluded between a white person and another person possessed of one-eighth or more of negro blood.

Causes for Absolute Divorce:

1. Adultery.

2. Impotency existing at the time of the marriage.

3. Abandonment for two years.

4. Cruel and inhuman treatment of either party by the other.

5. Habitual drunkenness of either party.

6. The failure of the husband to make reasonable provision for his family for a period of two years.

7. The conviction, subsequent to the marriage, in any country, of either party, of an infamous crime.

Limited divorces are granted for husband's desertion, or failure to support his wife.

Iowa.

Marriage.—A male must be at least 16 and a female 14 to conclude marriage.

Impediments.—The prohibited degrees of consanguinity and affinity are the same as those of Illinois.

Causes for Absolute Divorce:

1. Against the husband when he has committed adultery subsequent to the marriage.

2. When he wilfully deserts his wife and absents himself without a reasonable cause for the space of two years.

3. When he is convicted of a felony after the marriage.

4. When, after marriage, he becomes addicted to habitual drunkenness.

5. When he is guilty of such inhuman treatment as to endanger the life of his wife.

6. Against the wife for the causes above specified, and also when the wife at the time of the marriage was pregnant by another than her husband, unless such husband have an illegitimate

child or children then living, which was unknown to the wife at the time of their marriage.

There is no limited divorce allowed in this State.

Kansas.

Marriage.—No male under 17 years or female under 15 years of age may contract marriage without the consent of their parents and the probate judge of the district.

Impediments.—The prohibited degrees are the same as those of Iowa.

Marriage is a civil contract which may be celebrated before a clergyman or magistrate.

Causes for Divorce.—Abandonment for one year; adultery; impotency; extreme cruelty; fraudulent contract; habitual drunkenness; gross neglect of duty; the conviction of a felony and imprisonment in the penitentiary therefor subsequent to the marriage.

Kentucky.

Marriage.—A male must be at least 14 years and a female 12 years.

Marriages below these ages are prohibited and void, but the courts having general equity jurisdiction may declare void a marriage when the male was under 16, or the female under 14 years of age at the time of the marriage, and the marriage was without the consent of the father, mother, guardian, or other person having the proper charge of his or her person, and has not been ratified by cohabitation after that age.

As a civil contract marriage may be celebrated either civilly or religiously.

Impediments.—Same as in Kansas, with the

addition that marriages between whites and negroes or mulattoes are prohibited.

CAUSES FOR DIVORCE:

1. Abandonment for one year.
2. Adulterous cohabitation.
3. Condemnation for felony.
4. Husband's confirmed drunkenness.
5. Wife's habitual drunkenness.
6. Wife's pregnancy by another man.
7. Adultery on part of wife.

Plaintiff must have been a resident of the State at least one year.

LOUISIANA.

MARRIAGE.—A civil contract which may be celebrated by a minister, priest, judge or magistrate. No special form required.

Males must be at least 14 years and females 12 years. Parental consent necessary unless minor is twenty-one years of age.

The prohibited degrees of consanguinity and affinity are the same as those of all the Southern States.

CAUSES FOR DIVORCE:

1. Adultery.
2. Condemnation of either spouse for infamous offence.
3. Habitual intemperance.
4. Cruel treatment.
5. Abandonment.
6. Attempt to kill.
7. Public defamation.
8. Flight from justice.

In case of divorce on ground of adultery, the guilty party cannot marry his or her accomplice.

Maine.

Marriage.—Minimum age not fixed by statute. Parental consent necessary for males under 21 years and females under 18 years.

No special form of marriage ceremony required.

Impediments.—Same as those of Massachusetts.

Causes for Absolute Divorce:

1. Adultery.
2. Impotency.
3. Extreme cruelty.
4. Three years' utter desertion.
5. Gross and confirmed habits of intoxication.
6. Cruel and abusive treatment.
7. When the husband being of sufficient ability, grossly, or wantonly and cruelly, refuses to provide suitable maintenance for his wife.

The procedure and effects of divorce are almost identical with those of Massachusetts.

Maryland.

Marriage.—The minimum age for marriage is not fixed by statute, but parental consent is required for males under 21 years and females under 16 years.

Impediments.—Marriage is prohibited between ascendants and descendants, and collaterally between all persons related by consanguinity and affinity as set forth in the list of impediments in the statement of the law of Massachusetts.

Marriage is also forbidden between whites and negroes, or persons of negro descent.

Formalities.—Marriage licenses are required, and a ceremonial solemnization is essential.

Marriage may be solemnized "by any minister of the Gospel, or other officer or person authorized by the laws of this State to solemnize marriage."

CAUSES FOR ABSOLUTE DIVORCE:

1. The impotence of either party at the time of the marriage.

2. Any cause which renders a marriage null *ab initio*.

3. Adultery.

4. Abandonment continued uninterruptedly for at least three years.

5. When the woman before marriage has been guilty of illicit carnal intercourse with another man, the same being unknown to her husband at the time of the marriage.

Limited divorces granted for cruelty of treatment.

All divorces are at first granted *nisi*—provisionally—to become absolute on application six months afterward.

MASSACHUSETTS.

MARRIAGE.—The minimum age for marriage is not fixed by law, but males under 21 years and females under 18 years must have parental consent.

IMPEDIMENTS.—No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister or mother's sister.

No woman shall marry her father, grandfather, son, grandson, stepfather, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother or mother's brother.

In all cases in which the relationship is founded on marriage the prohibition continues, notwith-

standing the dissolution by death or divorce of the marriage by which the affinity is created, unless the divorce is for a cause which shows such marriage to have been originally unlawful or void.

FORMALITIES.—Marriage may be solemnized by a minister of the Gospel, a duly qualified rabbi, or a justice of the peace. No special form of ceremony is required.

CAUSES FOR ABSOLUTE DIVORCE:

1. Adultery.
2. Impotency.
3. Extreme cruelty.
4. Utter desertion continued for three consecutive years next prior to the filing of the libel.
5. Gross and confirmed habits of intoxication caused by the voluntary use of intoxicating liquor, opium or other drugs.
6. Cruel and abusive treatment.
7. On the libel of the wife, when the husband, being of sufficient ability, grossly, or wantonly and cruelly, refuses or neglects to provide suitable maintenance for her.
8. When either party has separated from the other without his or her consent, and has united with a religious sect that professes to believe the relation of husband and wife void or unlawful, and has continued united with such sect or society for three years, refusing during that term to cohabit with the other party.
9. When either party has been sentenced to confinement at hard labour for life or for five years or more in the State prison, or in jail, or house of correction.

ALIMONY.—Temporary and permanent alimony may be granted to the wife.

FORM OF DECREE.—Decrees of divorces are in the first instance *nisi*, and become absolute six

months afterward upon application; unless the court for sufficient cause, on the petition of any interested party, shall otherwise order.

Michigan.

Marriage.—The minimum age for males is 18 years and for females 16 years. Parental consent is necessary for a female under 18 years.

Prohibited Degrees.—Same as in Massachusetts, with the exception that marriages between first cousins are prohibited in Michigan.

Formalities.—License is required. No particular form of celebration prescribed.

Marriage may be solemnized by any qualified clergyman, judge or justice of the peace.

Causes for Divorce:

1. Adultery.
2. Impotency at time of marriage.
3. Sentence of either party to prison for three years or more.
4. Desertion continued two years.
5. Habitual drunkenness.
6. In the court's discretion, a divorce may be granted to any resident whose husband or wife has obtained a divorce in another State.

Limited or absolute divorces may also be granted for extreme cruelty; utter desertion for two years; and wanton failure of husband to support his wife.

Minnesota.

Marriage.—The minimum age for males is 18 years, for females 15 years. Parental consent is required for marriage of male under 21 years or female under 18 years.

The prohibited degrees of consanguinity and affinity are the same as in Michigan.

No particular form of marriage ceremony is prescribed, but a license is necessary.

CAUSES FOR DIVORCE:

1. Adultery.
2. Impotency.
3. Cruel and inhuman treatment.
4. Sentence to State prison.
5. Wilful desertion continued for three years.
6. Habitual drunkenness.

Limited divorces are granted to women only on the grounds of husband's cruelty, abandonment, or such conduct on husband's part as makes cohabitation unsafe.

MISSISSIPPI.

MARRIAGE.—The minimum age for marriage is not fixed by statute. Parental consent is required for males under 21 years and females under 18 years.

The prohibited degrees of relationship are the same as in Massachusetts.

Marriages of whites with negroes, mulattoes, or persons having more than one-eighth negro blood, and marriages between Mongolians, or persons having more than one-eighth Mongolian blood, are prohibited.

Marriage cannot be concluded without a license duly issued. It may be solemnized by either clergyman or magistrate.

CAUSES FOR DIVORCE:

1. Relationship within prohibited degrees.
2. Impotency.
3. Adultery.
4. Sentence to penitentiary.
5. Wilful desertion continued two years.

6. Habitual drunkenness.
7. Pregnancy of the wife at marriage, by another man, unknown to husband.
8. Habitual cruelty.
9. If either party had another husband or wife at time of second marriage.
10. Insanity.
11. Habitual use of opium, morphine or other drug.

Limited divorces are not granted.

Missouri.

Marriage.—The minimum age at which marriage can be concluded is 15 years for males and 12 years for females.

Parental consent is necessary for males under 21 years or females under 18 years.

Prohibited Degrees.—Marriage is forbidden between ascendants and descendants, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, and aunts and nephews. This applies to legitimate or illegitimate kindred.

Marriage is also prohibited between whites and negroes.

Formalities.—No particular form of marriage is prescribed, but a license is necessary.

Causes for Divorce:

1. Impotency.
2. Adultery.
3. Absence without reasonable cause for one year.
4. Former marriage undissolved.
5. Conviction of felony or infamous crime.
6. Habitual drunkenness.
7. Cruel treatment.
8. Intolerable indignities.

9. Vagrancy of husband.
10. Conviction prior to marriage by either party of felony or infamous crime, unknown to the other spouse.
11. Pregnancy at time of marriage of wife by another man.

Upon granting a divorce the court will make such direction concerning custody of children, and maintenance of wife, as justice may require.

Montana.

Marriage.—Males cannot marry under 18 years and females under 16 years. If either party is a minor parental consent is required.

Impediments.—Marriages between ancestors and descendants of every degree, between brothers and sisters of whole or half blood, between uncles and nieces, or aunts and nephews, legitimate or illegitimate, are forbidden.

Formalities.—Outside of license, no particular formalities are prescribed.

Causes for Divorce:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion.
4. Wilful neglect.
5. Habitual intemperance.
6. Conviction of felony.

Nebraska.

Marriage.—Males must be at least 18 and females 16 years of age to conclude marriage. Parental consent is required for males under 21 years and females under 18 years.

Impediments.—Marriages between ascendants and descendants, between brothers and sisters of

whole or half blood, between uncles and nieces, aunts and nephews, and first cousins of the whole blood, are prohibited.

CELEBRATION.—A marriage license is necessary, but no particular form of celebration is prescribed.

GROUNDS FOR DIVORCE:

1. Adultery.
2. Impotency at time of marriage.
3. Sentence to three years' imprisonment or more.
4. Abandonment for two years.
5. Habitual drunkenness.
6. Extreme cruelty.
7. Utter desertion.
8. When husband unreasonably and cruelly refuses to provide maintenance for wife.

Limited divorce may be obtained on the three last grounds.

NEVADA.

MARRIAGE.—Males cannot marry under 18 years or females under 16 years. Parental consent is required for males under 21 years and females under 18 years.

PROHIBITED DEGREES.—Marriages between persons nearer of kin than second cousins of the whole blood or cousins of the half blood.

FORMALITIES.—No particular form prescribed, but it is unlawful for clergyman or magistrate to solemnize marriage without having a license presented.

CAUSES FOR DIVORCE:

1. Impotency at time of marriage.
2. Adultery.
3. Wilful desertion for one year.
4. Conviction of felony or infamous crime.
5. Habitual drunkenness.

6. Extreme cruelty.

7. Neglect of husband to provide necessaries of life.

Upon granting a decree of divorce the court shall make such other direction regarding disposition of property and custody of children as justice may demand.

New Hampshire.

Marriage.—A male cannot marry under 14 years or a female under 13 years. There is no statutory requirement for parental consent.

Prohibited Degree.—Same as in Massachusetts. Common law marriage is recognized.

Formalities.—License is necessary, but no particular form of ceremony is required.

Causes for Divorce:

1. Impotency.
2. Adultery.
3. Extreme cruelty.
4. Conviction of crime punishable in this State for more than one year.
5. Treatment detrimental to health.
6. Treatment to endanger reason.
7. Three years' absence.
8. Habitual drunkenness.
9. When either party joins a sect opposed to cohabitation between husband and wife.
10. Desertion for three years.

Upon granting a decree of divorce the court will make such order as to maintenance of wife and custody of children as the facts shall call for.

New Jersey.

Marriage.—No minimum age is fixed for marriage. Males under 21 years and females under 18 years must have consent of parents.

IMPEDIMENTS.—A man shall not marry any of his ancestors or descendants, or his sister, or the daughter of his brother or sister, or the sister of his father or mother, whether such collateral kindred be of the whole or half blood. A woman shall not marry any of her ancestors or descendants, or her brother, or the son of her brother or sister, or the brother of her father or mother, whether such collateral kindred be of the whole or half blood.

FORMALITIES.—A marriage license is necessary only for non-residents of State.

No special form of ceremony is prescribed, except that when solemnized by a religious society it must be according to the rules and usages of such society.

CAUSES FOR DIVORCE:

1. Adultery.

2. Wilful, continued and obstinate desertion for the term of two years.

3. When either party was, at the time of marriage, incapable of consenting thereto and the marriage has not been subsequently ratified.

LIMITED DIVORCES. Granted for

1. Desertion.

2. Adultery.

3. Extreme cruelty.

In every case, except for extreme cruelty, the party asking for a limited divorce must allege conscientious scruples against applying for an absolute divorce.

JURISDICTION.—The Court of Chancery has exclusive jurisdiction in divorce matters.

ANNULMENT.—A marriage may be annulled because:

1. One of the parties had another wife or husband living at the time of marriage.

2. When the parties are within the degrees prohibited by law.

New Mexico.

Marriage.—A male must be at least 18 years and a female 15 years to conclude marriage. Parental consent is required for males under 21 years and females under 18 years.

Prohibited Degrees.—Marriage between ascendants and descendants, between brothers and sisters, of whole or half blood, between uncles and aunts, and nieces and nephews are void.

Formalities.—License is necessary. No special form of ceremony required. The marriage may be solemnized by an ordained clergyman, civil magistrate or religious society.

Grounds for Divorce:

1. Adultery.
2. Cruel and inhuman treatment.
3. Abandonment.
4. Habitual drunkenness.
5. Neglect of husband to support his wife.
6. Impotency.
7. Pregnancy by wife, at the time of marriage, by another than her husband, without husband's knowledge.
8. Conviction and imprisonment for a felony.

New York.

Marriage.—Marriage is a civil contract, to which the consent of the parties capable in law of making the contract is essential. Minors become capable of contracting marriage upon completing their eighteenth year of age. A marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party thereto was under the age of eighteen at the time it was concluded.

IMPEDIMENTS.—Marriage between an ancestor and a descendant, between a brother and sister, of either the whole or half blood, between an uncle and niece, or an aunt and nephew, whether the relatives are legitimate or illegitimate, is incestuous and void.

The defeated party in an action of divorce against whom a decree has been granted on the grounds of adultery is prohibited from marrying again during the lifetime of the successful party. However, the court which granted the decree has power so to modify it as to permit such marriage after five years.

COMMON LAW MARRIAGE.—By an act which became effective April 12, 1901, the law of New York has required a contract of marriage to be signed by the parties and witnesses acknowledged and recorded. Since that time a "common law" marriage, or one established simply by cohabitation and reputation, has not been recognized.

MARRIAGE LICENSES.—The legislature of New York, at its session in 1907, passed an act providing for marriage licenses, which became effective January 1, 1908.

Written consent of both parents or guardian must be given to the town or city clerk before he may issue license. If residents of the State, they must personally appear and execute the consent; if non-residents, it must be executed, acknowledged and certified.

WHO MAY SOLEMNIZE MARRIAGE.—A clergyman or minister of any religion, or the leader, or the two assistant leaders, of the Society for Ethical Culture in New York City, justices and judges of courts of record, judges of the county courts, justices of the peace, mayors, recorders and aldermen of cities.

MARRIAGE BY CONTRACT.—A lawful marriage may be concluded by a written contract of marriage signed by both parties, and at least two witnesses who shall subscribe the same, stating the place of residence of each of the parties and witnesses and the date and place of marriage, and acknowledged by the parties and witnesses in the manner required for the acknowledgment of a conveyance of real estate to entitle the same to be recorded. Such contract shall be filed, within six months after its execution, in the office of the clerk of the town or city in which the marriage was solemnized.

JEWS AND QUAKERS.—Marriages among Quakers or Jews may be solemnized in the manner and according to the regulations of their respective societies.

ENCOURAGEMENT OF MARRIAGE.—No marriage shall be deemed or adjudged invalid, nor shall the validity thereof be in any way affected on account of any want of authority in any person solemnizing the same, if consummated with a full belief on the part of the persons so married, or either of them, that they were lawfully joined in marriage.

DIVORCE.—The only cause for absolute divorce is the adultery of either party.

JURISDICTION.—The Supreme Court has exclusive original jurisdiction of actions for divorce.

In an action for absolute divorce, both parties must have been residents of the State when the offense was committed; or must have been married within the State; or the plaintiff must have been a resident when the offense was committed, and also when the action was commenced; or when the offense was committed within the State, the plaintiff must have been a resident when the action was commenced.

LIMITED DIVORCE.—A limited divorce, which is equivalent to a judicial separation in England, may be granted because of:

1. The cruel and inhuman treatment of the plaintiff by the defendant.

2. Such conduct, on the part of the defendant toward the plaintiff, as may render it unsafe and improper for the latter to cohabit with the former.

3. The abandonment of the plaintiff by the defendant.

4. When the wife is plaintiff, the neglect or refusal of the defendant to provide for her.

In actions for limited divorce both parties must have been residents of the State when the action was commenced; or when the marriage took place within the State, the plaintiff must have been a resident thereof, when the action was commenced; or when the marriage took place out of the State, the parties must have become residents thereof, and have continued to be such at least one year, and the plaintiff must have been a resident when the action was commenced.

ANNULMENT OF MARRIAGE.—An action to procure a decree declaring the marriage contract void and annulling the marriage may be maintained on any of the following grounds:

1. When either party was under the age of legal consent.

2. When either party was an idiot or lunatic.

3. When either party was physically incapable of entering into the marriage state, and such incapacity continues, and is incurable.

4. When the consent of either party was obtained by force, duress or fraud.

5. When either party had a former wife or husband living, the former marriage being in force.

By a woman plaintiff on the following grounds:

1. Where the plaintiff had not attained the age of 16 years at the time of marriage.

2. When the marriage took place without the consent of the parent, guardian, or other person having legal charge of her.

3. Where it was not followed by consummation or cohabitation, and was not ratified after attaining the age of 16 years.

DEFENCES IN DIVORCE ACTIONS.—Divorce will not be granted for the cause of adultery:

1. When the offense alleged has been condoned or forgiven by plaintiff.

2. When the adultery was committed by the procurement, connivance, privity or consent of plaintiff.

3. If five years have elapsed since the plaintiff discovered the defendant's guilt.

4. If there is existing any decree of any competent of any State or Territory of the United States granting an absolute divorce to the defendant and against the plaintiff.

5. If it appears that the plaintiff has also committed adultery.

CUSTODY OF CHILDREN.—During the pendency of an action for divorce, or on final judgment, the court may give such directions as justice requires for the custody, care and education of any of the children of the marriage.

ALIMONY.—The court has power during the pendency of an action for divorce to grant a woman plaintiff or defendant such allowance out of her husband's estate as may be necessary and just for her support, and also that she may be able to procure counsel to prosecute or defend the suit in her behalf.

If the wife becomes successful in the action the court may in its discretion award her perma-

nent alimony. The amount of alimony in all cases depends upon the wife's needs, her social status, and her husband's ability to make provision for her.

FORM OF DIVORCE DECREE.—Decrees are first entered *nisi*, or provisionally, and cannot become absolute until the expiration of three months after the entry of the decree *nisi*.

NORTH CAROLINA.

MARRIAGE.—A male becomes capable of marrying at 16 years and a female at 14 years, but both if under 18 years require parental consent.

IMPEDIMENTS.—Marriage is prohibited between persons nearer of kin than first cousins of the whole or half blood.

So is marriage between whites and negroes or Indians, or between whites and persons of negro or Indian descent to the third generation, inclusive.

CAUSES FOR DIVORCE:

1. Husband's fornication or adultery.
2. Wife's adultery.
3. If either party at time of marriage was and still is naturally impotent.
4. Wife's pregnancy at time of marriage by another man, without husband's knowledge.

LIMITED DIVORCE.—A limited divorce may be obtained for the following causes:

1. If either party abandons his or her family.
2. If either party maliciously turns the other out of doors.
3. Cruel or barbarous treatment by one party endangering life of the other.

NORTH DAKOTA.

MARRIAGE.—No male can conclude marriage under 18 years of age or female under 15 years of age.

IMPEDIMENTS.—Marriage is prohibited between persons nearer of kin than second cousins of the whole blood.

FORMALITIES.—License necessary. No particular form of ceremony is required, but the parties must express consent in presence of person solemnizing the marriage, and of at least one witness.

CAUSES FOR DIVORCE:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion for one year.
4. Wilful neglect for one year.
5. Habitual intemperance for one year.
6. Conviction of felony.

Plaintiff must have been in good faith, a resident of the State for six months before filing petition, and either a citizen of the United States or a person who has declared his or her intention to become such.

OHIO.

MARRIAGE.—To marry, a male must be at least 18 years and a female 16 years of age. Parental consent is required for males under 21 years and females under 18 years.

IMPEDIMENTS.—Marriage between persons nearer of kin than second cousins is forbidden.

FORMALITIES.—License is necessary unless banns be published in presence of congregation on two different days of public worship. No particular form of ceremony is required. The marriage may be solemnized by any ordained minister licensed by the State to perform marriages, or a justice of the peace in his county.

CAUSES FOR DIVORCE:

1. Upon proof that either party was already married at time of the marriage sought to be dissolved.

2. Wilful absence of one party from the other for three years.
3. Adultery.
4. Impotency.
5. Extreme cruelty.
6. Fraudulent contract.
7. Any gross neglect of duty.
8. Habitual drunkenness for three years.
9. Imprisonment in a penitentiary.
10. Procurement of a divorce without the State.

ACTIONS FOR SEPARATE MAINTENANCE.—A wife may sue for separate maintenance because of:

1. Adultery.
2. Gross neglect of duty.
3. Abandonment without good cause.
4. Habitual drunkenness.
5. Sentence to imprisonment in a penitentiary.

EFFECTS OF DIVORCE.—If the divorce is granted to the wife, because of the aggression of the husband, she shall be allowed such alimony out of her husband's property as the court deems reasonable. If the husband secures a divorce, on the aggression of the wife, he shall be allowed such alimony out of the wife's property as the court deems reasonable.

The granting of a divorce does not affect the legitimacy of the children of the parties.

Upon granting a divorce, the court shall make such order for the care and support of the children as is just and proper.

OKLAHOMA.

MARRIAGE.—The minimum age for marriage and the rule as to parental consent are the same as that stated for Nebraska.

IMPEDIMENTS.—Same as in Nebraska.

FORMALITIES.—Same as in Nebraska.

CAUSES FOR DIVORCE:

1. Adultery.

2. Former husband or wife living.
3. Abandonment for one year.
4. Impotency.
5. Pregnancy by wife at time of marriage by another man.
6. Extreme cruelty.
7. Fraudulent contract.
8. Habitual drunkenness.
9. Gross neglect of duty.
10. Conviction of felony.

ACTION FOR SEPARATE MAINTENANCE.—This action may be maintained for any of the causes sufficient for divorce.

OREGON.

MARRIAGE.—A male is capable of marrying at 18 years, a female at 15 years. Parental consent is required for males under 21 years and females under 18 years.

IMPEDIMENTS.—Marriages between first cousins of the whole or half blood or relatives nearer of kin are prohibited.

Marriages between whites and negroes or Mongolians, or persons of one-fourth or more negro or Mongolian blood.

CAUSES FOR DIVORCE:

1. Impotency.
2. Adultery.
3. Conviction of felony.
4. Habitual drunkenness.
5. Wilful desertion for one year.
6. Cruel and inhuman treatment, or personal indignities rendering life burdensome.

PENNSYLVANIA.

MARRIAGE.—The minimum age for marriage is not fixed by statute. Both males and females

require parental consent to marry under 21 years of age.

IMPEDIMENTS.—A man may not marry his mother, father's sister, mother's sister, sister, daughter, granddaughter, father's wife, son's wife, son's daughter, wife's daughter, daughter of wife's son or daughter.

A woman may not marry her father, father's brother, mother's brother, brother, son, grandson, mother's husband, daughter's husband, husband's son, son of her husband's son or daughter.

By the act effective January 1, 1902, marriage is prohibited between persons who are of kin of the degree of first cousins.

FORMALITIES.—License is necessary unless there is a publication of banns.

The parties may solemnize their own marriage by obtaining from the clerk of the orphans' court a formal declaration of their right to do so instead of a license.

Marriage may be solemnized by any minister of the Gospel, justice of the peace, or alderman, or by the parties themselves.

CAUSES FOR ABSOLUTE DIVORCE:

1. Natural impotence or incapacity of procreation at time of marriage, and still continuing.
2. Former marriage still subsisting.
3. Adultery.
4. Wilful and malicious desertion for the space of two years.
5. Husband's cruel and barbarous treatment endangering wife's life.
6. Husband having offered such indignities to wife as to render her condition intolerable and life burdensome.
7. Relationship within prohibited degrees.
8. Marriage procured by fraud, force or coercion.

9. Wife's cruel and barbarous treatment of husband.

10. That either of the parties has been convicted as principal or accessory of the crime of arson, burglary, embezzlement, forgery, kidnapping, larceny, murder in first or second degree, voluntary manslaughter, perjury, rape, robbery, sodomy, buggery, treason, or misprison of treason, and has been sentenced to prison for more than two years.

11. That either husband or wife is a hopeless lunatic or *non compos mentis*.

Confinement for ten years or more in an asylum for the insane is conclusive proof of hopeless insanity.

LIMITED DIVORCE.—This may be granted for:

1. Husband turning wife out of doors.

2. Husband's cruel and barbarous treatment of wife.

3. Husband offering such indignities to his wife as to render her condition intolerable and force her to leave his house.

Upon hearing any cause for divorce the court may decree either a divorce or a decree of nullity.

RHODE ISLAND.

MARRIAGE.—No age fixed for marriage. Parental consent required for all minors.

IMPEDIMENTS.—Same as in Massachusetts. However, Jews are permitted to marry within degrees permitted by their religion.

CAUSES FOR DIVORCE:

1. In case marriage was originally void or voidable by law.

2. When either party is for crime deemed civilly dead.

3. When party may be presumed dead.

4. Impotency.

5. Adultery.

6. Extreme cruelty.
7. Wilful desertion.
8. Continued drunkenness.
9. Neglect or refusal of husband, being able, to support wife.
10. Any other gross misbehaviour and wickedness in either of the parties repugnant to and in violation of the marriage covenant.

South Carolina.

Marriage.—No age is fixed by law for marriage of minors, nor when parental consent is necessary.

Impediments.—Same as to prohibited degrees of kinship as in Massachusetts.

Marriages of whites with Indians, negroes, mulattoes, mestizos, or half-breeds, are forbidden.

Formalities.—No license is required, and no particular form of ceremony necessary.

Divorce.—By a provision of the State constitution divorces from the bonds of matrimony are not allowed in South Carolina.

Marriages may, however, be annulled for want of consent of either party, or for any other cause showing that at the time of the supposed marriage it was not a contract, provided such contract has not been consummated by cohabitation.

South Dakota.

Marriage.—Minimum age at which males can marry is 18 years, females 15 years. Parental consent is required for males under 21 years and females under 18 years.

Prohibited Degrees.—Same as in Massachusetts.

Common law marriages are recognized.

Marriage may be solemnized by minister, priest, judge of supreme court or probate court, justice of the peace, mayor, or by the parties themselves making a joint declaration.

CAUSES FOR DIVORCE:

1. Adultery.
2. Extreme cruelty.
3. Wilful desertion for one year.
4. Wilful neglect for one year.
5. Habitual intemperance for one year.
6. Conviction of felony.

Limited divorces are not granted.

TENNESSEE.

MARRIAGE.—The lowest age at which males can marry is 16 years, females 14 years. Parental consent in necessary for males under 21 years and females under 18 years.

CONSANGUINITY AND AFFINITY.—The prohibited degrees are the same as in Massachusetts.

Marriages of whites with negroes, mulattoes or persons of mixed blood are forbidden. A person declared guilty of adultery is forbidden his or her accomplice during the lifetime of the former spouse.

FORMALITIES. — License necessary. Marriage ceremony may be religious or civil in form.

CAUSES FOR DIVORCE:

1. Natural impotence and incapacity of procreation at time of marriage, and still existing.
2. A previous marriage still subsisting.
3. Adultery.
4. Desertion for two years.
5. Conviction of such crime as renders party infamous.
6. Conviction of felony.
7. Malicious attempt on life of other spouse.
8. Wife's refusal to move with husband into this State, and wilful absence from him for two years.
9. Wife's pregnancy at time of marriage by another person, without husband's knowledge.

10. Habitual drunkenness.

LIMITED DIVORCES.—Such relief is granted to a wife only, for the following causes:

1. Cruel and inhuman treatment, rendering it unsafe and improper for continued cohabitation.

2. Such indignities offered to wife as render condition intolerable, and force her to leave husband.

3. Husband's abandonment of wife, or his turning her out of doors, refusing or neglecting to provide for her.

TEXAS.

MARRIAGE.—Earliest age for males to marry is 16 years; females 14 years. Parental consent required for males under 21 years and females under 18 years.

IMPEDIMENTS.—The prohibited degrees of kinship are the same as in New York.

Marriage is forbidden between persons of European blood or their descendants and Africans or the descendants of Africans.

FORMALITIES.—License required. Marriage may be solemnized by religious or civil ceremony.

CAUSES FOR DIVORCE.—

1. Excesses; cruel treatment.

2. Wife taken in adultery.

3. Wife's abandonment of husband for three years.

4. Husband's desertion with intention of abandonment for three years.

5. When husband abandons wife and lives in adultery.

6. Conviction of felony and imprisonment therefor in State prison.

There is no such thing as a limited divorce in this State.

Utah.

Marriage.—Males may marry at 14 years and females at 12 years, but if the former are under 21 years and the latter under 18 years parental consent is required.

Prohibited Degrees.—Marriage between ascendants and descendants, between brothers and sisters of the whole or half blood, between uncles and nieces, or aunts and nephews, or between any persons related to each other within the fourth degree of consanguinity is prohibited.

Marriage is also forbidden between a white person and a negro or Mongolian.

Formalities.—After a license has been procured the marriage may be solemnized by a minister or priest, judge of the Supreme or District Court, mayor of a city, or justice of the peace.

Causes for Divorce.—

1. Impotency.
2. Adultery.
3. Wilful desertion for more than one year.
4. Wilful neglect of husband to provide for wife.
5. Habitual drunkenness.
6. Conviction for felony.
7. Cruel treatment.
8. Permanent insanity of defendant.

To maintain an action for the last cause the plaintiff must prove that defendant has been adjudged insane at least five years before the beginning of action and that the insanity is incurable.

Vermont.

Marriage.—No minimum age is fixed by statute for marriage of minors, but males under 21 years

and females under 18 years require consent of parents.

IMPEDIMENTS.—The prohibited degrees of consanguinity and affinity are the same as in Massachusetts.

FORMALITIES.—License, called in Vermont a "certificate," is necessary.

No special form of marriage ceremony is prescribed, except that if solemnized by Quakers the ceremony must be in the form used in Quaker societies.

CAUSES FOR DIVORCE.—

1. Adultery.
2. When either party is sentenced to confinement in the State prison for life, or for three years or more, and is actually confined at the time.
3. Intolerable severity of either party.
4. Wilful desertion for three consecutive years.
5. Absence of either party for seven years without being heard of during that time.
6. Husband's cruel refusal or neglect to provide suitable maintenance for wife.

LIMITED DIVORCES.—A limited divorce, which leaves the marriage undissolved, may be granted for any of the causes for which an absolute divorce may be granted.

VIRGINIA.

MARRIAGE.—A male is deemed capable of marriage at 14 years and a female at 12 years, but for all minors under 21 years parental consent is required.

PROHIBITIONS.—Marriage between ascendants and descendants, and between persons nearer of kin than the fourth degree of consanguinity, is prohibited. Marriage between white and colored persons is forbidden.

FORMALITIES.—No marriage or attempted marriage, if it took place in this State, can be held valid here unless shown to have been under a license and solemnized according to statute. However, no particular marriage ceremony is prescribed, except that, if solemnized by a religious society, it must be in the manner practiced by such society.

CAUSES FOR DIVORCE.—

1. Adultery.
2. Incurable impotency.
3. Sentence to penitentiary.
4. Conviction of one party (without the knowledge of the other) of an infamous offence before marriage.
5. Flight from justice.
6. Desertion continued for three years.
7. Wife's pregnancy at time of marriage by another man, unknown to husband.
8. Upon proof that prior to marriage wife had been, unknown to husband, a prostitute.

LIMITED DIVORCE.—May be granted for:

1. Cruelty.
2. Reasonable apprehension of bodily hurt.
3. Abandonment.
4. Desertion.

WASHINGTON.

MARRIAGE.—Marriage is a civil contract which may be entered into by males of the age of 21 years and females of the age of 18 years who are otherwise capable.

PROHIBITED DEGREES.—Marriage is prohibited between persons nearer of kin than second cousins, whether of the whole or half blood, computing by the rules of the civil law.

CELEBRATION.—No particular form of ceremony prescribed, but license is necessary.

CAUSES FOR DIVORCE.—

1. Consent to marriage obtained by force and fraud and no subsequent voluntary cohabitation.
2. Adultery.
3. Impotency.
4. Abandonment for one year.
5. Cruel treatment.
6. Personal iniquities.
7. Habitual drunkenness.
8. Neglect to provide for wife or family.
9. Present imprisonment in penitentiary.
10. Any other cause in the court's discretion if it appears parties should not continue the marriage relation.
11. Incurable chronic mania or dementia existing for ten years or more.

WEST VIRGINIA.

MARRIAGE.—Males may marry at 18 years and females at 16 years, but parental consent is required for all persons under 21 years of age.

PROHIBITED DEGREES.—Same as in the State of Washington.

FORMALITIES.—As to issuance of license and celebration, same as in Washington.

If a man, having had a child by a woman, afterward intermarries with her, such child is deemed legitimate.

CAUSES FOR DIVORCE.—

1. Adultery.
2. Incurable impotency.
3. Sentence to penitentiary.
4. Conviction before marriage of an infamous offence, unknown to other spouse.
5. Desertion for three years.
6. Pregnancy of wife at time of marriage by another man, unknown to husband.

7. Proof that wife, unknown to husband, had been before marriage a notorious prostitute. Proof that husband, unknown to wife, had been before marriage a licentious person.

LIMITED DIVORCES.—Granted for:

1. Cruel treatment.
2. Reasonable apprehension of bodily hurt.
3. Abandonment.
4. Desertion.
5. Habitual drunkenness.

WISCONSIN.

MARRIAGE.—Males may marry at 18 years and females at 15 years, but parental consent is required for males under 21 years and females under 18 years.

PROHIBITED DEGREES.—Marriage is forbidden between persons nearer of kin than first cousins, of the whole or half blood, computing by the rules of the civil law.

FORMALITIES.—Since April 29, 1899, a marriage license is required, but no particular form of celebration is necessary.

CAUSES FOR DIVORCE.—

1. Adultery.
2. Impotency.
3. Sentence to imprisonment for three years or more.
4. Wilful desertion for one year.
5. Cruel and inhuman treatment.
6. Wife's intoxication.
7. Husband's habitual drunkenness for one year.
8. Voluntary separation of parties continued for five years.
9. Extreme cruelty.
10. Husband's refusal or wilful neglect to provide for wife.

11. Husband's conduct such as to render it unsafe and improper for wife to live with him.

A limited divorce may be granted for all these causes except the first three.

Wyoming.

Marriage.—A male may marry at 18 years and a female at 16 years. Parental consent is required if either party is a minor.

Prohibited Degrees.—Marriage between ascendants and descendants, between brothers and sisters of the whole or half blood, between uncle and niece, or aunt and nephew, and between first cousins, is forbidden. This applies to legitimate or illegitimate kindred, but only to persons related by blood.

Formalities.—A license issued by county clerk is necessary.

Parties must solemnly declare in the presence of a minister or magistrate, and two witnesses, that they take each other as husband and wife.

Causes for Divorce.—

1. Adultery.
2. Physical incompetence at time of marriage continued to time of divorce.
3. Conviction and sentence for felony.
4. Wilful desertion for one year.
5. Habitual drunkenness.
6. Extreme cruelty.
7. Neglect of husband for one year to provide common necessaries of life.
8. Such indignities as render conditions intolerable.
9. Vagrancy of husband.
10. Conviction before marriage (unknown to other spouse) for felony or infamous crime.
11. Pregnancy of wife by another man at time of marriage, unknown to husband.

Limited divorces are not granted in this State.

CHAPTER XXVI.

Dominion of Canada and Newfoundland.

The Dominion of Canada now consists of the Provinces of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan, together with certain territories not as yet included in any Province.

The Canadian Constitution, similar in principle to that of Great Britain, is embodied in the British North America Act of 1867 (30 Vict. c. 3).

This act, which was passed by the Imperial Parliament, created the federation now styled the Dominion of Canada, and assigned to the Dominion Parliament power "to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this act assigned exclusively to the Legislatures of the Provinces."

One great distinction between the Canadian Constitution and the Constitution of the United States of America is that powers not specifically granted to the Provinces are reserved to the Dominion Government, whereas under the American Constitution powers not specifically granted to the Federal Government are reserved to the States, or to the people.

Marriage and divorce are specifically set forth in the Canadian Constitution as a branch of legislation exclusively within the control of the Dominion Parliament, but although forty-three years have passed since the act became operative the Dominion Parliament has so far enacted only two statutes concerning the subject. The first act

(May 17, 1882) legalized the marriage of a man with his deceased wife's sister, and the second (May 16, 1890) legalized the marriage of a man with his deceased wife's sister's daughter.

The Dominion of Canada shares with Ireland the distinction of having no law permitting a judicial decree of divorce.

However, by one clause of the British Act of North America there was preserved in full force the laws and judicial system of the several Provinces until the laws should be repealed or the courts abolished by competent authority.

Consequently, four of the nine Provinces, namely, British Columbia, New Brunswick, Nova Scotia and Prince Edward Island, have their individual laws of divorce and divorce courts.

Of the eight millions of people living in Canada six millions have no possibility of divorce except by a special act of the Dominion Parliament.

The Dominion Parliament has power to grant an absolute divorce for any cause, but it never has done so except for adultery.

Divorce petitions or bills are, as a matter of practice, introduced first in the Senate, where there is a standing committee to deal with them.

For the Provinces of Ontario, Quebec and Manitoba, and the Northwest and other Territories, the Dominion Parliament is the only authority which can grant an absolute divorce.

MARRIAGE.—Legislation concerning the formal requirements and solemnizations of marriage is still within the exclusive authority of the legislatures of the Provinces.

As to the impediments which arise from blood and marriage, the law throughout the Dominion of Canada is in agreement with the law of England, which is based upon the 18th chapter of the Book of Leviticus.

It is expressly provided by the act, 28 and 29 Vict. c. 64, that every law made or to be made by the legislature of any British possession, "for the purpose of establishing the validity of any marriage or marriages contracted in such possession, shall have and be deemed to have had from the date of the making of such law the same force and effect for the purpose aforesaid within all parts of Her Majesty's dominions as such law may have had or may hereafter have within the possession for which the same was made. Provided that nothing in this law contained shall give any effect or validity to any marriage unless at the time of such marriage both of the parties thereto were, according to the law of England, competent to contract the same."

Validity of Foreign Divorces.—When the validity of a foreign divorce is considered by the Canadian courts the judges apply the strict rule of refusing to recognize a decree of divorce pronounced by a court within whose jurisdiction the parties had not a bona fide domicile.

The courts also hold that a marriage celebrated in Canada between persons domiciled there is in its nature indissoluble except by death or by the act or decree of the Dominion Parliament, or a Canadian court of competent jurisdiction, and that no judgment of a foreign court dissolving such a marriage will be recognized in Canada.

This rule invites, and has received, such severe criticism for its injustice that it cannot long be maintained by such tribunals of learning and integrity as the courts of Canada.

Suppose a Canadian man and woman domiciled in Toronto should intermarry there, and afterwards acquire a joint domicile of twenty years' duration in New York City. If, after that period, the wife should obtain in the courts of the State

of New York a divorce on the grounds of her husband's adultery, and should remarry another man, upon her return to Canada it would be manifestly unjust to treat the divorce and second marriage as null and void.

Some of these days the Canadian courts will be called upon to consider the legal effect of a divorce obtained upon statutory grounds in England in a suit between two persons who were married in Canada and at the time of such marriage were domiciled in that country. Perhaps then the rule we have mentioned and criticised will be relaxed.

The Island and Colony of Newfoundland, although a British colony in North America, is not yet incorporated as a part of the Dominion of Canada. It has its own governor, legislature and judicial system entirely separate from the Dominion and its own marriage and divorce law.

The jurisdiction of Newfoundland extends not only over the island by that name, but also over the whole of the Atlantic coast of Labrador.

Age Requirements.—The legal age for marriage in British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Quebec, the Northwest Territories and Newfoundland is fourteen for a male and twelve for a female. In Ontario both males and females must be at least fourteen years of age.

Parental Consent.—In British Columbia, Manitoba, Nova Scotia, Prince Edward Island, Quebec, the Northwest Territories and Newfoundland parental consent is necessary for both males and females under twenty-one years of age.

In New Brunswick and Ontario parental consent is required for males and females under eighteen years of age.

In British Columbia an appeal may be taken to the courts if consent is refused by parent or guardian.

CELEBRATION.—Marriages may be solemnized by duly qualified clergymen of every religious denomination, or by a judge, justice of the peace or other magistrate.

Unless banns are published a license must be produced for each marriage, and can only be obtained from the proper local authority upon affidavit or declaration of one of the parties to the intended marriage, showing that no legal impediment exists and that the proper consents have been obtained.

The competency of a Protestant minister to marry two Roman Catholics in the Province of Quebec was called in question by the leading case of Delphit v. Coté, reported in the Quebec Reports, 20 S. C. 338. The plaintiff, who had been baptized as a member of the Roman Catholic Church, was married to the defendant, who, at the time at least, professed the same belief, by a minister of a Protestant denomination, by virtue of a license issued in due form. Subsequently an ecclesiastical court of the Catholic Church declared the marriage null on the ground that two Roman Catholics could only be married by a Roman Catholic priest. Upon appealing to the civil court for an annulment of the marriage because of the ecclesiastical decree, it was held that the ecclesiastical court was entirely without jurisdiction and that the marriage was in all legal respects good and binding.

MARRIAGES WITH INDIANS.—A Christian who marries an aboriginal native or Indian cannot exercise in Canada the right of divorce or repudiation of his wife at will, although following the usages of the tribe or "nation" to which his Indian

wife belongs such divorces and repudiations are customary and regular.

ANNULMENT OF MARRIAGE.—In any of the Provinces, or in Newfoundland, the courts may annul marriages on the ground of fraud, mistake, coercion, duress or lunacy.

FOREIGN MARRIAGES.—The courts of Canada and Newfoundland recognize a marriage concluded in a foreign country as valid if it was performed in accordance with the laws of the foreign country, if each person was competent to marry, according to the laws of the country of his and her citizenship, and if the marriage was not in violation of the general laws and usages of Christendom.

ONTARIO.—The High Court of Justice in this Province has jurisdiction where a marriage correct in form is ascertained to be void *de jure* by reason of the absence of some essential preliminary to declare the same null and void *ab initio;* but nothing short of the most clear and convincing testimony will justify the interposition of the court.

As we have observed before, there is no divorce court in the Province.

Every married woman is entitled to hold and alienate as her separate property all wages and profits acquired by her in any separate occupation which she may conduct on her separate account.

QUEBEC.—This Province, which is composed largely of Roman Catholic inhabitants of French ancestry, treats marriage as a religious contract.

The system of jurisprudence in Quebec is an admixture of the Code Napoleon, the *coutume de Paris,* and the common law of England. The provisions of the Civil Code and Code of Civil Procedure of the Province are largely of French origin.

Marriage must be solemnized openly by a competent officer recognized by law and must be pre-

ceded by the publication of banns, unless a license is obtained. A license for a marriage by a Protestant clergyman must be issued from the office of the Provincial Secretary.

A marriage contracted without the free consent of both parties, or of one of them, can only be attacked by such parties themselves or by the one whose consent was not free.

A marriage contracted before the parties, or either of them, have attained the age required can no longer be contested if six months have elapsed since the party or parties have attained the proper age; or if the wife under that age has conceived before the termination of six months.

The laws in this Province concerning the rights of married women to own property separate from their husbands are almost mediæval.

A married woman cannot take judicial proceedings without being authorized so to do by her husband or the court.

A husband and wife cannot contract with each other even with the assistance of a third person. They cannot even make donations to each other during the marriage.

Husband and wife are not competent witnesses against each other in a court of law.

Neither the courts nor the Provincial legislature grant divorces which dissolve the marriage bond. Applications for such relief must be addressed to the Dominion Parliament.

A separation from bed and board is granted by the courts to either party to a marriage upon proof of adultery, cruelty, desertion or confirmed drunkenness; and to a wife for the failure of her husband to provide her proper support.

Where a husband keeps a concubine in the same house with his wife the latter is justified in

leaving him to live elsewhere, and in so doing the wife does not lose any of her marital rights.

Quebec is the only Province in the Dominion of Canada where a child born out of wedlock is legitimatized by the subsequent marriage of the parents.

British Columbia.—The Divorce and Matrimonial Act of 1857, passed by the Imperial Parliament, is in full effect in this Province.

The Supreme Court has jurisdiction to entertain a petition for divorce between persons domiciled in the Province and in respect of matrimonial offences alleged to have been committed therein.

Absolute divorces are granted on the application of the husband on the ground of adultery; on the application of the wife on the ground of incestuous adultery, bigamy with adultery, rape, sodomy or bestiality, adultery coupled with such cruelty as without adultery would have entitled her to a judicial separation, or adultery coupled with desertion, without reasonable excuse, for two years or upwards. Alimony may be ordered to be paid to the wife, by the decree dissolving the marriage or granting a separation, or it may be sued for separately if the wife has either obtained or is entitled to such a decree. After absolute divorce either party may marry again. The procedure in divorce matters is almost identical with that of England.

A judicial separation may be obtained by either spouse because of:

1. Adultery.
2. Cruelty.
3. Desertion without cause for two years or more.

New Brunswick.—It is interesting to note that in this Province a married woman may acquire, hold and dispose of, by will or otherwise (except

that husband's curtsey will not therefore be affected), any real or personal property as her separate property, in the same manner as if she were a *femme sole,* without the intervention of any trustee, and may enter into and render herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued in all respects as if she were a *femme sole.*

The grounds for absolute divorce are:

1. Impotency.
2. Adultery.
3. Consanguinity.

Nova Scotia.—This old Province, originally called Acadia, has a judiciary which consists of a chief justice, an equity judge and five puisne judges, a supreme court having law and equity jurisdiction throughout the Province, a vice-admiralty court and a court of marriage and divorce.

The rules as to consanguinity and affinity, the causes for divorce and judicial separation and the civil effects of marriage and divorce are the same as in England.

Alberta.—The Supreme Court Act (February 11, 1907) established the Supreme Court of the Province and provided that the court "shall have jurisdiction to grant alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce and to alimony as incident thereto, or to any wife whose husband was separate from her without any sufficient cause and under circumstances which would entitle her by the laws of England to a decree for restitution of conjugal rights; and alimony, when granted, continue until further order of the court."

Northwest Territories.—The term "Northwest Territories" originally referred to the region over

which the Northwest Company exercised authority, the territorial limits of which were not clearly defined. The term is now used to designate the Canadian territories and districts of Yukon, Keewatin, Mackenzie, Ungava and Franklin.

As we have before observed, the law of marriage and divorce in the Northwest Territories is substantially the same as that of England.

NEWFOUNDLAND.—This, the oldest British colony in North America, is the most modern in its law of domestic relations.

Marriage is considered a civil contract, which may be solemnized before a qualified clergyman of any sect, or a judge, justice of the peace or other magistrate.

A married woman has the same right of buying, selling, owning and controlling any kind of real or personal property as a single woman. She has also the fullest right to make any lawful contract without adding her husband as a party. She may sue and be sued as if she were a single woman or a man.

There being no divorce courts, the Provincial legislature having no power to grant divorces, and the Colony of Newfoundland being outside of the jurisdiction of the Dominion Parliament of Canada, an absolute divorce cannot be obtained in the colony.

CHAPTER XXVII.

The Republic of Mexico.

Mexico is a federative Republic composed of twenty-seven States, three Territories and a Federal District.

Under the present Constitution, which is dated February 5, 1857, each State has the power to control its own local domestic concerns and to have its own separate executive, legislature and judiciary.

The Civil Code of the Federal District (*El Codigo Civil de Distrito Federal*) was enacted simply for the Federal District and the Territories of Lower California, Tepic and Quintana Roo, but each of the twenty-seven States have in their respective Civil Codes adopted the provisions of the Federal Civil Code, especially with reference to the law of marriage and divorce. Therefore, we find it unnecessary to deal with each State separately.

Marriage.—The courts of Mexico, following the Federal Code, define marriage as the lawful copartnership of one man and one woman united for life in an indissoluble bond to perpetuate their species and to render each other mutual assistance, fidelity and sympathy in bearing together the burdens of life.

The law does not recognize in any manner future espousals, nor any conditions contrary to the legitimate purposes of marriage.

Marriage must be preceded by the statutory preliminaries and be celebrated before authorized

officials with all such formalities as are by law required.

A male must be at least 14 years of age and a female at least 12 years of age to contract marriage, unless a dispensation from the superior political authority is obtained permitting marriage at an earlier age. Such a dispensation can only be obtained in exceptional cases and for good cause.

Parental consent is required for the marriage of both males and females under the age of 21 years. If the father is dead the consent of the mother is sufficient. If both the father and mother are dead then the consent of the paternal grandfather will suffice. If he is also dead the paternal grandmother must give consent. In the event of both paternal grandparents being dead the maternal grandparents take their place and exercise the *patria potestad.*

IMPEDIMENTS.—The impediments to marriage are:

1. Incapacity of the parties, as when one or both are under age.
2. Absence of the consent of parents or of the person exercising the rights of a parent.
3. Mistake as to the identity of either party.
4. Relationship within the prohibited degrees.

CONSANGUINITY AND AFFINITY.—Marriages are prohibited between ascendants and descendants; between brothers and sisters of the whole or half blood; between uncles and nieces; aunts and nephews, and all other persons related by blood or marriage within the third degree.

The laws of Mexico recognize no relationship other than one by consanguinity and affinity.

Each generation constitutes a degree, and the series of degrees constitute the line of relationship.

OTHER PROHIBITIONS:

A. A marriage is prohibited when either of the intending parties has a husband or wife still living.

B. If one of the parties has made an attempt against the life of the husband or wife of the other with the intention of marrying the survivor.

C. If one of the parties has obtained the apparent consent of the other by fear, coercion or duress.

D. If either of the parties is permanently and incurably insane.

FORMALITIES.—Parties intending to conclude marriage must personally appear before the judge of civil status of the domicile of either party, and state their intention. The judge will thereupon make an entry in a register kept for that purpose of the names, occupations and domiciles of both of the contracting parties, the names, occupations and domiciles of their parents, if the same be ascertainable, the names, occupations and domiciles of the witnesses whom the parties present to the judge as knowing the legal capacity of the parties, and proof of the consents of the parents, or of such persons as are lawfully exercising the rights of the parents.

If either of the contracting parties has been previously married the judge must require proper evidence that the former consort is dead.

If it appears that there exists any impediment to the intended marriage which could be removed by a dispensation from the superior political authority such dispensation must be exhibited.

Upon the judge receiving the required proof that the parties may be legally married he will cause a copy of the record to be posted in a conspicuous place in his office for 15 days, and two similar copies must be posted in the usual

public places. If, during the publication as aforesaid, and for three days thereafter, no valid opposition is made by any one to the marriage, it becomes the duty of the judge, upon request of the parties, to fix the place, day and hour for the celebration.

A marriage must be celebrated in public at the place and time previously fixed by the judge. The parties must appear in person or by their specially appointed proxies, and be attended by at least three adult witnesses, who may be relatives.

The parties, by themselves, or by their specially appointed proxies, must formally declare to the judge in the presence of the witnesses their intention to take each other as husband and wife, upon which declaration the judge shall pronounce them man and wife and make an official record of the marriage.

Rights and Obligations of Marriage.—Husband and wife are obliged to be faithful to each other, and each must contribute his or her part to the objects of the marriage. They are under mutual obligation to succor and protect one another and to render each to the other affection and sympathy.

It is a wife's duty to live with her husband and to follow him wherever he may choose to go and accept his selection of a conjugal home.

A husband is obligated to provide alimentation (*alimentos*) to his wife even though she may have brought no property into the marital community. By alimentation is meant not only necessary food, but raiment and things of personal necessity and comfort commensurate with the husband's ability to make such provision. The husband owes his wife the duty of protecting her person and reputation.

The wife must obey her husband in domestic concerns, in the matter of training and educating

the children of the marriage and in all affairs connected with the common property and the household.

If the wife has property of her own she must furnish alimentation (food, clothing and lodging) to her husband when he is in want and cannot obtain it for himself.

If a husband proposes to leave the Republic to live in a foreign land the wife may apply to the courts to be relieved from the usual duty of adopting her husband's residence.

The husband is the legitimate representative and manager of all of the property of the marriage. He is ordinarily his wife's representative in legal proceedings. A wife generally cannot appear either personally or by attorney in a suit at law without her husband's authorization in writing.

If she is of full age a wife does not require her husband's authorization in the following instances:

A. To defend herself in a criminal action.

B. To bring a suit against her husband.

C. To devise or bequeath her own separate property by a will.

D. When her husband is in what the Mexican lawyers call a state of interdiction, as, for example, when he is under guardianship or insane.

E. When she is in business on her separate account and the suit or proceeding relates to such business.

Divorce.—It is in the chapter of the Civil Code entitled *"Del divorcio"* that we find the statutory provisions concerning divorce. The chapter begins by stating positively that divorce (*divorcio*) does not dissolve the bonds of matrimony. We must remember that the Federal Code is founded upon the Spanish Code, and that both Mexico and Spain,

being historically Roman Catholic countries, reflect the leading dogmas of the Catholic Church in their civil jurisprudence. What is called a divorce in Mexican law is at the most a separation from bed and board. It simply suspends certain of the civil obligations and effects of marriage.

CAUSES FOR DIVORCE:

1. Adultery of the wife under any circumstances.

2. Adultery of the husband, if the adultery is committed in the conjugal home, or if the husband is living in concubinage, or if the husband's adultery causes a public scandal and attracts public contempt or insult to the wife, or if the wife has been ill used by word or deed by her husband's paramour or on account of her.

3. If the husband proposes or plans to prostitute his wife, or accepts from a third person any money, article or valuable consideration for the purpose of effecting such prostitution.

4. When either spouse instigates or encourages the other to commit a crime.

5. The attempt by positive acts by either husband or wife to corrupt their children or by deliberately permitting third persons to practice such corruption.

6. Abandonment without just and legal cause of the conjugal home (*casa comun*), or if there is just and legal cause for such abandonment, to remain away for one year or more without beginning a suit for divorce.

7. Cruelty, threats or injury of a serious nature by one spouse against the other.

8. False accusation of a grave nature made by either party against the other.

9. The refusal, or wilful neglect, of one spouse to furnish alimentation, or support, to the other, in accordance with law.

10. Incorrigible vices of gambling or drunkenness.

11. The existence of a chronic and incurable disease which is hereditary or contagious afflicting one of the spouses previous to the marriage, of which the other spouse had no knowledge when the marriage was concluded.

12. If the wife gives birth to a child conceived before marriage, which child has been judicially declared illegitimate.

13. An infringement or violation of the marriage settlements (*capitulaciones matrimoniales*).

14. Mutual consent of the parties.

PROCEEDINGS FOR DIVORCE.—Even if the spouses consent to a divorce there must be a formal legal proceeding. In such a case the suit is begun by a petition to the judge setting forth clearly the consent to divorce and the agreement of the parties as to the maintenance of the wife, the custody of the children and the disposition or division of the property held in common.

When such a petition is filed it becomes the duty of the judge to summon the parties before him and to endeavour to effect a reconciliation.

In a suit where the spouses do not mutually consent to a divorce, it is still the legal duty of the judge to attempt a reconciliation of the parties.

ANNULMENT OF MARRIAGE.—While the Mexican law does not recognize absolute divorce it does provide for the annulment or setting aside absolutely of certain marriages. Marriages are voidable and may be annulled in the courts on the following grounds:

A. If the parties are related within the prohibited degrees of consanguinity and affinity.

B. If the parties, or either of them, were incapable by reason of non-age or otherwise of legally concluding marriage.

C. If the necessary parental consent, or consent of the person exercising the *patria potestad*, was not had.

D. If the marriage was irregular or contrary to law, as, for example, if the proper publication was omitted, or no witnesses attended the celebration.

E. If there exists in either party, and existed before the marriage, an incurable impotency for copulation.

Want of legal age of either party is not a ground for annulment if a child is born, the issue of the union.

And if either party, or both, were under the legal age at the time of marriage, a decree of annulment will not be granted if, upon becoming twenty-one years of age, the spouses continue to cohabit together.

Such marriages as we have pointed out above are not void, but voidable, and any of the grounds sufficient for annulment may be waived by the aggrieved spouse.

Effects of Divorce.—Divorce can only be granted to the innocent party, and suit therefor must be brought within one year after the petitioner discovers the facts which constitute a legal cause for a decree.

The innocent party, pending the action, or even after the final decree, may require the other party to resume the marriage relationship.

The most usual effect of a divorce is a physical separation of the spouses.

If the wife is the guilty party she may, on her husband's suggestion, be directed by the judge to live in a certain house, for the protection of the good name of the husband.

Upon the finding of a decree of divorce, if the parties have not reached an appropriate agree-

ment, the judge will make such directions as to the maintenance of the wife, custody of children and division of common property as justice may require.

FOREIGN MARRIAGES.—Marriages concluded between foreigners in a foreign country, which are valid in that country, will be recognized as valid for all civil effects in Mexico.

A marriage between a Mexican citizen and a foreigner, or between two Mexican citizens, and concluded in a foreign country, will be valid for all civil effects in Mexico, provided such marriage was concluded according to the law of the foreign country and is not in violation of the Mexican laws as to the prohibited degrees of relationship, capacity to contract and consent of persons in *loco parentis*.

Foreign laws (*leyes extranjeras*) must be established as matters of fact by the persons relying upon their existence, and their application to questions at issue must also be shown.

Within three months after a Mexican citizen who has concluded marriage in a foreign country returns to the Republic, he or she must cause the inscription of the celebration to be entered in the Civil Register of his or her domicile.

CHAPTER XXVIII.

Argentine Republic.

The Civil Code of the Argentine Republic shows strong evidences of the Spanish origin of its precepts. As in the old motherland marriage is considered as indissoluble except by the death of one of the contracting parties. However, the Republic does not accept the decrees of the Council of Trent or the canonical law of the Catholic Church on the subject of marriage as parts of the law of the land.

As a matter of religion the people of Argentina may consider marriage as a sacrament or divine ordinance, or not, as it pleases their consciences, but as a matter of law marriage in the Argentine Republic is simply a civil contract.

Essentials of Marriage.—For the validity of marriage there must be the consent of two contracting parties declared before the public official in charge of the civil register. The contract can be declared by proxy, but only with a special authorization from the principal, in which the person with whom the proxy has to conclude the marriage is clearly described.

Impediments.—The existence of any of the following conditions make a marriage unlawful:

1. Consanguinity between ascendants and descendants without limitation, whether legitimate or illegitimate.
2. Consanguinity between brothers and sisters and half brothers and sisters, legitimate or illegitimate.
3. Affinity in the direct line in all degrees.
4. The woman not being twelve and the man fourteen years of age.

5. The existence of a previous marriage.

6. Where one of the parties has been voluntarily the author of, or the accomplice in the death of, the former husband or wife of the other.

7. Insanity.

8. A woman over twelve years of age and a man over fourteen, but minors, and the deaf and dumb who cannot write cannot bind themselves in marriage without the consent of their legitimate father, or, failing him, without their mother's consent, or that of their guardian, or of the judicial consent or permission, in the absence of the above. The civil judge will decide in cases of disagreement.

9. A guardian, or his descendants under his power, cannot marry minors under his guardianship so long as the latter lasts.

PRELIMINARIES.—Those who desire to marry must present themselves before the public official in charge of the civil register, at the domicile of one of the parties, and verbally declare their intention to marry. Two witnesses are required who, from their knowledge of the contracting parties, can declare as to their identity and that they consider them capable of being married.

CELEBRATION.—The marriage must be celebrated before the official charged with the civil registry in his office, publicly, the bride and bridegroom, or their proxies, appearing in person, in the presence of two witnesses and with the formalities prescribed by law. If either of the contracting parties are unable to appear at the registry office the marriage may be celebrated at his (or her) residence.

If the marriage be celebrated in the registry office two witnesses must be present, and four witnesses if it is celebrated at the domicile of either of the contracting parties.

In celebrating the marriage the Public Registrar must read to the contracting parties those portions of the law which define the rights and obligations of married couples. He must also receive from each the declaration that they respectively desire to take each other as husband and wife. He must also formally declare the couple to be man and wife.

There is no legal objection to a religious celebration of marriage following the civil ceremony, which alone is treated as legally effective.

Husband and Wife.—The contracting parties are bound to be mutually faithful, but the infidelity of the one does not excuse the infidelity of the other. The one who breaks this obligation can be proceeded against by the other in the divorce courts without prejudice to what is laid down on the subject by the Penal Code.

The husband is bound to live in the same house as his wife and to give her all necessary assistance, protection and support.

If there be no marriage contract to the contrary, the husband is the legal administrator of all the property belonging to the married couple, including that of the wife, as well as that which they possessed at marriage as of that subsequently acquired by them in their own right.

The wife is bound to live with the husband wherever he may fix his residence.

A wife cannot, without her husband's permission, go to law, make any contract, or acquire goods, nor alienate or pledge goods without such permission. The wife may, of course, in certain cases, such as divorce, acquire judicial authorization for prosecuting or defending a suit in the courts.

Divorce.—The courts of the Argentine Republic grant divorces, but in effect they only amount

to a personal separation of the parties to a marriage, without the dissolution of the bonds of matrimony.

These so-called divorces are granted for the following causes:

1. Adultery of the husband or wife.
2. Attempt by one of the parties on the life of the other, either personally or as an accomplice.
3. The instigation of one of the parties by the other to commit adultery or other crimes.
4. Cruelty.
5. Serious injuries. In estimating the gravity of the injury the judge will take into consideration the education and social position of the parties.
6. Such ill-treatment, even if not serious, as renders married life unsupportable.
7. Wilful and malicious desertion.

Effects of the Divorce.—If the wife be of age she can exercise all the usual acts of civil life.

Each of the parties can fix his or her domicile or residence where he or she thinks fit, even if it be abroad. However, if the party have children under his or her care, they cannot be taken abroad without the permission of the court of their domicile.

The innocent party can revoke the donations or advantages which he or she may have made or promised to the other by the marriage contract, whether they were to have come into effect during the life of the party or after his or her death.

Children less than five years old remain in the mother's custody. Those over that age shall be handed over to the party who, in the opinion of the judge, is most fitted to educate and care for them.

The husband who may have given cause for divorce must continue to support the wife if she have not sufficient means of her own. The judge

shall decide the amount and manner in which this shall be done, with due regard to the circumstances of both parties.

Whichever of the parties may have given cause for divorce will have the right to require the other, if he or she be able to do so, to provide him or her with subsistence, if such be absolutely necessary.

Dissolution of Marriage.—A legal marriage can only be dissolved by the death of one of the contracting parties.

A marriage which can be dissolved in accordance with the laws of the country in which it was celebrated cannot be dissolved in the Argentine Republic except by the death of one of the parties.

The supposed decease of one of the contracting parties, either through absence or disappearance, will not enable the other to marry again. So long as the decease of one of the contracting parties, either through absence or disappearance, has not been absolutely proved, the marriage is not considered as dissolved.

Annulment of Marriage.—A marriage may be annulled when it was contracted in violation of some legal impediment, or for want of proper consent.

Second or Further Marriages.—A woman cannot marry again for ten months after a dissolved or annulled marriage, unless she was left pregnant, in which case she may marry after having given birth to the child.

Proof of Marriage.—A marriage must be proved by certificate, or copy thereof, of such marriage. If it is impossible to produce the certificate, or its copy, all other means of proof will be allowed, but these other proofs will not be admitted unless it is previously established that such certificate or copy cannot be produced.

CHAPTER XXIX.

The United States of Brazil.

The United States of Brazil (*Estados Unidos do Brazil*), the largest country in South America and one of the most extensive political subdivisions of the world, is a Republic comprising twenty States and a Federal District.

Its present constitution was adopted February 24, 1891, and is in many respects similar to that of the United States of America.

The legislative power is vested in the President of the Republic and a National Congress, consisting of a Senate and Chamber of Deputies.

The individual States are governed by their governors and legislatures, and possess their own judicial systems.

The main body of the civil law has its origin in the Portuguese Code and in the judicial precedents of Portugal.

There is a Supreme Federal Court of Justice, which sits at the capital, Rio de Janeiro, and Federal Courts in each of the twenty States.

Ninety-nine per centum of the people of Brazil are Roman Catholics and consider marriage as a religious sacrament, but the law of the land considers it simply as a civil contract.

Marriage.—The Civil Code defines marriage as a perpetual contract between two persons of different sex to live together and establish a legitimate family.

A civil or legal celebration of marriage is compulsory for all persons, irrespective of race or creed. If after the civil marriage the parties may desire to satisfy their consciences and the man-

dates of their church or sect by having the marriage solemnized in a religious form, there is no legal objection thereto.

Marriage is forbidden:

1. Of minors under the age of 21 years, unless with parental consent.

2. Of persons of adult age who are incapable of properly governing themselves or their estates, without the authorization of their legal representatives.

3. Of an adulterous wife with her accomplice who has been condemned for the offence.

4. Of a wife or widow who has been condemned as the principal or accomplice of the crime of homicide with a principal or accomplice in the same crime.

5. Of a person bound by solemn vows of religion to a life of chastity.

The canon law of the Roman Catholic Church is accepted as defining the religious rules and spiritual effects of marriage, but the civil law defines the status and temporal effects of the marriage contract.

Prohibited Marriages.—The following persons are forbidden to marry each other:

1. Ascendants and descendants.

2. Persons related collaterally in the second degree.

3. Males who have not completed their fourteenth year and females who have not completed their twelfth year of age.

4. Persons already bound by marriage.

Preliminaries.—The intending parties must present themselves in person before the registrar and produce certificates showing:

A. Full names, ages, occupations and domiciles of the contracting parties.

B. The full names, ages, occupations and domiciles of their parents, or, if they are dead, the same particulars of those who replace them *in loco parentis.*

C. Proof of the consents of such persons who in law are entitled to give or withhold consent to the proposed marriage.

D. A declaration in writing by two respectable witnesses of full age, certifying acquaintance with the contracting parties, and knowledge that they are not related within the prohibited degrees of kinship.

If either of the contracting parties has been previously married, proof of the death of the former spouse must be given to the registrar.

Upon receiving satisfactory proof as stated above, the registrar must post a notice of the proposed marriage in a conspicuous place in his office, which notice informs all interested persons to file their objections, if any they have, in the registry within fifteen days. If at the end of this period no valid objection to the marriage has been formulated the civil officer proceeds to the celebration of the marriage.

A marriage concluded before a civil officer in the form established by the civil law of Brazil can only be annulled by a civil court.

Divorce.—The law of the Republic does not permit of an absolute divorce for any cause whatsoever. A true marriage can only be dissolved by the death of one of the parties.

Judicial Separation.—A separation of the person and goods may be had for the following causes:

1. Adultery of the wife.

2. Adultery of the husband, if such adultery creates a public scandal, or if the husband brings

his concubine into the home he has established for his wife.

3. Sentence of one of the spouses to life imprisonment.

4. Cruel and ill-human treatment.

FOREIGN MARRIAGES.—The courts of Brazil recognize as valid a marriage between two foreigners concluded in a foreign land, provided that such marriage is monogamous, is not between ascendants or descendants, or between persons related collaterally in the second degree, and if such marriage was regularly concluded according to the law of the country of its celebration.

A marriage abroad of a citizen of the Republic of Brazil must conform not only to the law of the place of its celebration, but must also be in strict accordance with the law of Brazil.

CHAPTER XXX.

The Republic of Cuba.

A nation may in a day overthrow a dynasty which has ruled for centuries, it may in a few years completely revolutionize its system of government and methods of trading, but its ancient code of marriage will live on unchanged for ages.

It is a noteworthy fact that the law of Rome concerning marriage survived the Roman Empire by a thousand years, and even to-day it is the foundation of the law on that subject in all of the Continental countries of Europe and of the entire Western Hemisphere, with the exception of the United States of America and Canada.

In the Civil Code of Cuba we can see not only its recent origin from the Spanish Code, but traces of the Law of the Twelve Tables and the Institutes of Justinian.

Cuba is to-day a Republic composed of six Provinces. The seat of government is located at Havana, where sit the Senate and House of Representatives, which constitute the national legislature.

The Civil Code is the *Codigo Civil* of Spain, with such changes and modifications as have become effective since Spain lost its sovereignty over Cuba.

The statement of Cuban law which follows is, therefore, predicated upon the *Codigo Civil,* which by royal decree of May 11, 1888, was extended to the islands of Cuba, Porto Rico and the Philippines, upon proclamations and orders issued during the recent American military occupation and on the interpretation and construction of the positive law by Cuban courts and jurists.

MARRIAGE.—The law considers marriage as a civil contract, which may be concluded by either a civil (*matrimonio civil*) or a religious (*matrimonio religioso*) celebration.

A male cannot marry until he has completed his fourteenth year of age; a female until she has completed her twelfth year.

Marriages contracted by minors under the legal age become, however, *ipso facto* legal if a day after having arrived at the legal age the parties continue to live together without bringing suit to annul the marriage, or if the female becomes pregnant before the legal age or before the institution of a suit for annulment.

Only such persons as are in the full enjoyment of their reason can contract marriage.

Marriage is forbidden to all persons who suffer from absolute or relative physical impotency for the purposes of procreation.

Persons ordained *in sacris* and those professed in an approved canonical order, who are bound by a solemn pledge of chastity, cannot lawfully conclude marriage until they have obtained the proper canonical dispensation.

Those who are already bound in marriage cannot contract a new marriage.

Persons who are twenty-three years of age or upwards may conclude marriage, if otherwise of legal capacity, without parental consent or advice.

Persons under twenty years of age require the consent of their parents, or of such persons whose right it is to give or withhold such consent.

Persons who are more than twenty years of age, but under twenty-three, are under the obligation of asking the advice or counsel of their parents or of such persons standing in the parental relation before contracting marriage, and if the advice is refused, or it should be unfavourable, the

marriage cannot take place until three months after the petition was made.

The consent and the favourable advice for the celebration of a marriage must be proven, if requested, by means of an instrument authenticated by a civil or ecclesiastical notary or by the municipal judge of the domicile of the petitioner.

When the advice has been proven the lapse of time shall be proven in the same manner.

If a marriage is concluded by persons more than twenty years of age, and under twenty-three years of age, without compliance with the rules just stated, the marriage will be recognized as valid, but the offender is subject to certain disabilities and penalties.

CONSANGUINITY AND AFFINITY.—The following persons are prohibited from contracting marriage with each other:

1. The ascendants and descendants by legitimate or natural consanguinity or affinity.

2. Collaterals by legitimate consanguinity up to the fourth degree.

3. Collaterals by legitimate affinity up to the fourth degree.

4. Collaterals by natural consanguinity or affinity up to the second degree.

The government, for sufficient cause, may on the petition of a party grant a dispensation permitting a marriage of minors who have not obtained the proper permission or advice of the persons whose legal right it is to authorize one or the other.

For grave reasons the government may also grant a dispensation relieving a party from the prohibition of marrying within the third and fourth degrees of collaterals by legitimate consanguinity; the impediments arising from legitimate or natural

affinity between collaterals and those relating to the descendants of the adopter.

SPECIAL PROHIBITIONS.—The following persons cannot contract marriage with each other:

1. The adopting father or mother and the adopted; the latter and the surviving spouse of the former, and the former and the surviving spouse of the latter.

2. The legitimate descendants of the adopter with the adopted, while the adoption lasts.

3. Adulterers who have been condemned by a final judgment.

4. Those who have been condemned as authors, or as the author and accomplice, of the death of the spouse of either of them.

CELEBRATION OF MARRIAGE.—A civil marriage must be celebrated according to the requirements of the code, as changed or modified by subsequent orders, decrees and legislation.

Any clergyman, priest or minister, irrespective of faith or sect, who belongs to a religious denomination actually established in the Republic of Cuba, and who has been duly authorized, may solemnize marriage.

A register is kept in the office of the Secretary of Justice containing the names and addresses of all clergymen, priests and ministers who are qualified to solemnize marriage in the Republic.

Persons who desire to contract a religious marriage must present to the clergyman, priest or minister who is qualified to perform the ceremony a declaration signed by both of the contracting parties, stating:

1. The names, surnames, profession, domicile or residence of the contracting parties.

2. The names, surnames, profession, domicile or residence of the parents.

3. Certificates of birth and of the status of the

contracting parties, the consent or advice, if proper, and the dispensation, when it is necessary.

Upon the presentation of such a declaration the clergyman, priest or minister shall announce the future celebration of marriage between the parties according to the form or method prescribed by the rites and regulations of his religious denomination.

If the religious denomination of such clergyman, priest or minister has no established form for such announcement, then a publication must be made in the form established by the Civil Code. The method required by the Civil Code for proclaiming an intended marriage is set forth in Article 89, which directs a publication by posting the written declaration of the parties for fifteen days and calling upon those who have information of any obstacle to oppose the marriage.

A civil marriage can only be solemnized by a municipal judge (*Juez Municipal*), to whom must be presented as an indispensable preliminary such a signed declaration of the parties as is necessary in the case where the parties desire a religious ceremony.

A municipal judge chosen to celebrate a civil marriage will also direct as a preliminary to marriage such a proclamation as is required by Article 89 aforesaid.

A priest, minister or clergyman duly authorized to perform marriages may, for sufficient cause, dispense with the publication as before set forth; but in every case where a publication is made the marriage cannot be concluded after fifteen days after the first day of such publication.

No priest, clergyman or minister is now authorized to grant a dispensation permitting a marriage for any reason forbidden by the laws of the Republic.

An opposition to a marriage made by an interested person must be heard and determined by the municipal judge of the district before any person whatsoever is authorized to solemnize the nuptials.

The celebration itself must be witnessed by two adults, who may be relatives of the parties. Article 87 of the code, permitting one or both of the parties to a marriage to appear at the celebration, either personally or by proxies to whom a special power is given, is still in effect.

The municipal judge, priest, minister or clergyman who solemnizes a marriage must immediately furnish to the parties a certificate of marriage and cause a full and particular record of said marriage to be filed in the Civil Registry of the District (*Registro Civil del Distrito*), in default of which such judge, priest, minister or clergyman will be subject to a fine of one hundred *pesos,* or imprisoned for not less than 30 days, or not more than 90 days, by the Correctional Judge (*Juez Correccional*) of his domicile.

ANNULMENT OF MARRIAGES.—The civil courts have exclusive jurisdiction to decree an annulment of marriage.

The following marriages are void:

1. Those celebrated between persons related within the prohibited degrees, except in cases of dispensation.

2. Those contracted by error as to the person or by compulsion or intimidation.

3. Those contracted by the abductor with the abducted while she is in his power.

4. Those which are not solemnized by an authorized official.

A marriage contracted in good faith produces civil effects, although it may be declared void.

If good faith existed on the part of only one

of the spouses it shall produce civil effects only with regard to said spouse and to the children.

Good faith is presumed if the contrary does not appear.

When bad faith existed on the part of both spouses the marriage shall only produce civil effects with relation to the children.

After the annulment of a marriage the sons over three years of age shall remain in the care of the father and the daughters in the care of the mother, provided there was good faith on the part of both spouses.

If either or both were guilty of bad faith the tribunal has power to make such disposition of the children as justice may require.

RIGHTS AND OBLIGATIONS.—The spouses are obliged to live together, to be faithful to, and mutually assist, each other.

The husband must protect his wife, and the latter must obey her husband.

The wife is obliged to follow her husband wherever he may establish his residence. The tribunals may, for just cause, exempt her from this obligation when the husband removes his residence beyond the seas or to a foreign country.

The husband is the administrator of the property of the conjugal partnership, except when the contrary is stipulated.

The wife, however, retains ownership of the paraphernal property, which consists of such property as the wife brings to the marriage, not included in the dowry.

The husband is the representative of his wife. The latter cannot, without his permission, appear in a suit in person nor through an attorney.

Nevertheless, she does not require such permission to defend herself in a criminal suit or to

proceed against or to defend herself in suits with her husband.

Neither may the wife, without the permission of her husband, acquire property for a good or valuable consideration, alienate her property, or bind herself, except in certain exceptional cases, and within the limitations established by law.

A wife may without her husband's permission:

1. Execute a will.

2. Exercise the rights and perform the duties which appertain to her with regard to the legitimate and acknowledged natural children she may have had by another, and with relation to the property of the same.

Only the husband and his heirs can enforce the nullity of the acts executed by his wife without proper authorization.

DIVORCE.—Divorce only produces the suspension of the life in common of the spouses; it does not dissolve the marriage.

The legal causes for divorce are:

1. Adultery on the part of the wife in every case, and on the part of the husband when public scandal or disgrace of the wife results therefrom.

2. Personal violence actually inflicted or grave insults.

3. Violence exercised by the husband toward the wife in order to force her to change her religion.

4. The proposal of the husband to prostitute his wife.

5. The attempts of the husband or wife to corrupt their sons, or to prostitute their daughters, and connivance in their corruption or prostitution.

6. The condemnation of a spouse to penal servitude.

EFFECTS OF DIVORCE:

1. The separation of the spouses in every case.

2. The protection of the wife.

3. The placing of the children under the care of one or both of the spouses, as may be proper.

4. The provision for the support of the wife and of the children who do not remain under the authority of the father.

5. The adoption of the necessary measures to prevent the husband, who may have given cause for the divorce, from injuring the wife in the administration of her property.

FOREIGN MARRIAGES.—A marriage contracted in a foreign country, according to the laws of such country, is generally treated as valid in Cuba. Such a marriage, however, must be monogamous and otherwise in conformity with the general laws and usages of Christendom.

If the parties are Cubans, and are married abroad while retaining their domiciles in Cuba, the foreign marriage must also conform to the requirements of Cuban law with regards to the capacity of the parties and the necessary parental consent or advice.

PROOF OF MARRIAGE.—The ordinary manner to prove a marriage concluded in Cuba is to produce a certificate of the record of the civil registry, and this is the proof required unless the books of the civil registry never existed, or have disappeared, or a question is pending before the tribunals, in which case all kinds of direct evidence are admissible.

The uninterrupted status of the parents, together with the certificates of the birth of their children as legitimate, is one competent method of proving the marriage of said parents, unless it is shown that one of the two was bound by a prior marriage.

A marriage contracted in a foreign country may be established by showing an authenticated

copy of its registration. If such foreign country does not require a regular or authenticated registration the marriage must be proved by competent evidence of the regulations of marriage in the foreign country in question, together with proof that all such regulations were complied with.

Should a marriage be contracted in a foreign country between a Cuban and a foreign woman, or between a foreigner and a Cuban woman, and the contracting parties do not make special stipulations with regard to their property, it is understood, when the husband is a Cuban, that he marries under the system of the legal conjugal partnership; and when the wife is a Cuban that she marries under the system of laws in force in the husband's country.

ENGAGEMENTS TO MARRY.—Future espousals do not give rise to an obligation to contract marriage. No court will admit a complaint in which their performance is demanded.

However, if the promise has been made in a public or private instrument by a person of age, or by a minor in the presence of the person whose consent is necessary for the celebration of the marriage, or when banns have been published, the person who refuses to marry, without just cause, can be obliged to indemnify the other party for the expenses which he or she may have incurred by reason of the promised marriage.

An action to recover indemnity for such expenses must be instituted within a year, counted from the day of the refusal to celebrate the marriage.

SPANISH PRECEDENTS.—It should be remembered that in throwing off the yoke of Spanish rule the people of Cuba did not change their blood, language or traditions. Just as the law of the United States of America is founded upon the law of England

as it existed at the time of the adoption of the American Constitution, so the jurisprudence of the Republic of Cuba has as its foundation the law of Spain as it existed at the time the Republic was established.

In both instances there have been changes and modifications by legislative acts and judicial interpretations, but a Spanish judicial decision has even more weight in a Cuban tribunal than an English decision has in an American court because Cuba, being a younger Republic than the United States, is much nearer to its motherland in point of time, besides its closer resemblance in race, religion and customs.

CHAPTER XXXI.

Commonwealth of Australia.

The Commonwealth of Australia, created by an act of the Imperial Parliament in 1900 (63 and 64 Vic. cap. 12), is a federal State under the supreme authority of the Crown of Great Britain.

This act of Parliament not only created a federal Commonwealth out of the colonies of Queensland, New South Wales, Victoria, South Australia, West Australia and Tasmania, but it also granted to the new Commonwealth a written constitution which is obviously modeled upon that of the United States of America.

The constitution provides that "every law in force in a colony which has become or becomes a State shall, unless it is by this constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth or as at the admission or establishment of the State, as the case may be."

It is also provided that "when a law of a State is inconsistent with a law of the Commonwealth the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid."

All powers not delegated to the central or federal government are reserved to the States.

However, in spite of its resemblance to other federal systems, the principle of the responsibility of ministers to Parliament proclaims its English parentage.

The judicial power is exercised under the constitution by a federal supreme court, called the

High Court of Justice, and other courts of federal jurisdiction.

It is expressly provided in the Australian constitution that the Parliament of the Commonwealth shall, subject to the constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to "divorce and matrimonial causes, and in relation thereto, parental rights, and the custody and guardianship of infants."

It will be observed that Parliament is given no power under the constitution to make laws prescribing the qualifications for marriage, the impediments thereto, and regulations concerning the celebration. All such power is reserved by the respective States.

Moreover, the grant of power to Parliament to make laws with regard to "divorce and matrimonial causes" is not a power "by this constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State."

Until the Parliament of the Commonwealth shall legislate on the subject, by passing enactments concerning divorce and matrimonial causes superseding the existing statutes of the several States, the laws of each State will continue in operation.

In this chapter we shall consider, first, such laws and regulations concerning marriage and divorce as are in effect throughout the entire Commonwealth, and then, under separate headings, discuss the laws and regulations of each State.

Marriage.—The courts of Australia, following the English courts, only recognize as a true marriage one which, in addition to being valid in other respects, involves the essential requirement that

it is a voluntary union of one man and one woman for life to the exclusion of all others.

The law of the place where marriage is celebrated—that is, the *lex loci celebrationis*—alone guides the court in ascertaining whether or not a marriage is regular. All the formal preliminaries, such as the publication of banns, or license, the consent of the parties entitled to give or withhold consent and the solemn declaration of the contracting parties before competent authority, according to the law of the place of celebration, must be complied with.

LEGAL AGE.—The legal age for marriage throughout the Commonwealth of Australia begins with fourteen years for a male and twelve years for a female.

PARENTAL CONSENT.—In all of the States parental consent is required for the marriage of males and females under twenty-one years of age.

BANNS OR LICENSE.—Unless a marriage license is procured banns must be published in the parish in which the parties reside, and if they live in different parishes the banns must be published in each parish.

Where a man has caused the banns to be published or has procured a license under a false name or names, or has been married under a false name or names, he will not be allowed to annul the marriage on that account. A party cannot take advantage of his own fraud for the purpose of invalidating a marriage.

CONSANGUINITY AND AFFINITY.—The law considers it against public policy and morality, and contrary to the well-being of the parties, that persons closely related by blood or marriage should intermarry. Marriages are therefore prohibited between all ascendants and descendants, legitimate or illegitimate.

A man is also prohibited from marrying his stepmother, wife's mother, stepdaughter, daughter-in-law, son's daughter-in-law, daughter's daughter-in-law, stepson's daughter, stepdaughter's daughter, niece by blood, niece by affinity, or nephew's wife.

A woman is prohibited from marrying her uncle by blood or affinity, husband's uncle, father-in-law, stepson, son-in-law, son's son-in-law, daughter's son-in-law, stepson's son, stepdaughter's son, nephew by blood or affinity, or niece's husband.

ANNULMENT OF MARRIAGE.—A marriage may be annulled in any of the States of the Commonwealth upon competent proof showing:

1. A prior and existing marriage of one of the parties.

2. Impotency or such physical malformation of one of the parties which prevents him or her from consummating the marriage by sexual intercourse.

3. Relationship within the prohibited degrees.

4. That the marriage was procured by fraud, violence or mistake as to identity.

5. That one of the parties was insane at the time the marriage was concluded.

6. That the marriage was celebrated without the consent of the persons by law entitled to give or withhold consent.

7. That the marriage was performed without legal license, or the publication of banns, or solemnized before a person not having authority to officiate.

A marriage will not be annulled on the last ground stated if it appears that one of the parties acted in good faith and honestly believed that the person who solemnized the marriage had the required authority.

JUDICIAL SEPARATION.—A decree of judicial separation, which is equivalent to the old form of

limited divorce (*a mensa et thoro*) may be obtained in any of the States for the following causes:

1. Adultery of either husband or wife.
2. Desertion without legal cause for two years or more.
3. Cruelty or abusive treatment of one spouse by the other.

It is an absolute bar to a suit for judicial separation that the petitioner has committed adultery since the marriage.

DIVORCE.—Absolute divorces completely dissolving the marriage bond are granted by the courts of every State in Australia. As every State has its separate statutes on the subject, which set forth the legal causes for divorce, we shall consider such causes in our discussion of each State separately.

DEFENCES.—In all the States condonation of a matrimonial offence, which is a legal cause for divorce, is a good defence to the petition.

It is also a sufficient defence for the respondent to show that the offence complained of was committed by the connivance or active consent of the petitioner.

Connivance in adultery as a bar to divorce is founded on the doctrine *volenti non fit injuria*, the consent consisting in acquiescence, active or passive, in the adulterous intercourse. Passive acquiescence is a sufficient bar, provided it was carried out with the intention that the husband or wife would be guilty; but it must be something more than mere inattention, indifference or dulness of apprehension. The presumption, where the facts are equivocal, is in favour of absence of intention.

One spouse must not invite the other to commit adultery; but he or she may permit the licentiousness of the other spouse to have its full scope without being guilty of connivance.

It is not connivance to watch for the purpose of discovering a suspected fact so as to make conviction certain.

COLLUSION.—An illegal agreement and co-operation between a petitioner and a respondent in a divorce action to enable the petitioner to obtain a judicial dissolution is a fraud upon the court. Upon such collusion appearing the court, at its own instance, will dismiss the petition.

DESERTION.—The High Court of Justice of the Commonwealth has defined desertion, which in several of the States is a legal cause for absolute divorce, as follows: "Desertion involves an actual and wilful bringing to an end of an existing state of cohabitation by one party without the consent of the other. Such 'consent' must be shown by something more than a mere mute acquiescence in an existing state of separation or non-resistance to abandonment. What is necessary is some communication of the intended acquiescence or non-resistance to the other by express words or by conduct."

FORM OF DIVORCE DECREE.—A decree of divorce in any of the States is granted *nisi*, or provisionally, and cannot be made absolute until three months have elapsed after the decree *nisi* is entered.

A judicial separation may be granted, even if the suit is for an absolute divorce, if the court deems such a decree better meets the law and facts of the case.

VICTORIA.—The Marriage Act of 1890 (54 Victoria, No. 1166), entitled "An act to consolidate the laws relating to marriage and to the custody of children and to deserted wives and children and to divorce and matrimonial causes," is practically a short code on the subject of marriage and divorce.

CELEBRATION OF MARRIAGE.—The following persons, and none other, may celebrate marriages:

1. A minister of religion ordinarily officiating as such, whose name, designation and usual place of residence, together with the church, chapel or other place of worship in which he officiates, is at the time of the celebration of the marriage duly registered according to law in the office of the Registrar-General.

2. A minister of religion being the recognized head of a religious denomination.

3. A minister of religion holding a registered certificate that he is a duly authorized minister, priest or deacon from the head of the religious denomination to which he belongs, or, if there be no such religious head, from two or more officiating ministers of places of worship duly registered according to law.

4. The Registrar-General or other officer appointed for that purpose.

JEWS AND QUAKERS.—The law permits Jews and Quakers to be married by such persons and in such manner as is considered regular and lawful according to their respective beliefs and usages.

FORMALITIES.—A marriage must be preceded by a license or the publication of banns.

A marriage celebration requires the attendance of two witnesses of full age.

DIVORCE.—A domicile of two years or more is a condition precedent to bringing a suit for divorce.

The following are legal grounds for a divorce or dissolution of the marriage bond:

1. Adultery on part of the wife.

2. Adultery on part of the husband if committed in the conjugal residence or if it is coupled with circumstances or conduct of aggravation or of a repeated act of adultery.

3. Desertion without just cause continued for three years or more.

4. The habitual drunkenness of a husband for three years, if the husband has habitually left his wife without support, or has habitually been guilty of cruelty to her.

5. Habitual drunkenness of a wife for three years, if the wife has habitually neglected her domestic duties, or rendered herself unfit to discharge them.

6. Imprisonment of either spouse for not less than three years, and being still in prison under a commuted sentence for a capital crime, or under sentence to penal servitude for seven years or more.

7. If the husband has within five years undergone frequent convictions for crime and has been sentenced in the aggregate to imprisonment for three years or more, leaving his wife habitually without means of support.

8. That within a year previously the respondent has been convicted of having attempted to murder the petitioner, or of having assaulted him or her with intent to inflict grievous bodily harm, or that repeatedly during that period the respondent has assaulted and cruelly beaten the petitioner.

Form of Decree.—Divorce decrees are entered, in the first instance, *nisi*, or provisionally, and cannot be made absolute until after the expiration of three months following the decree *nisi*.

In Forma Pauperis.—Special provision is made enabling poor persons to prosecute suits for divorce by an interlocutory order in *forma pauperis*, which relieves the person in whose favour it is granted from certain charges and expenses, but does not furnish him or her with the free services of a solicitor or barrister.

RECENT DECISIONS.—An important divorce decision holds that visits to brothels by a petitioner who seeks a divorce on the ground of his wife's adultery constitute misconduct conducing to the adultery of the wife and bars the petitioner from a decree, without entering into the question of whether or not adultery was committed by the petitioner in the course of such visits.

However, the fact that a husband has conduced to an act of adultery by his wife is not a bar to him obtaining a divorce based on subsequent acts of adultery.

NEW SOUTH WALES.—The requirements as to age, consent of parents, or of persons standing in *loco parentis* are the same in this State as throughout the rest of the Commonwealth and have been set forth in the first part of this chapter.

No marriage can be celebrated except by a minister of religion ordinarily officiating as such, whose name, designation and usual residence have been and continue registered in the office of the Registrar-General for Marriages in Sydney or by a district registrar.

Parental consent is not required of persons who have previously been lawfully married and whose former marriage has been dissolved by death or divorce.

A marriage must be attended by two adult witnesses.

By the Matrimonial Causes Act of 1899 jurisdiction in respect of divorces *a mensa et thoro* (judicial separations), suits for nullity of marriage, suits for dissolution of marriage (absolute divorce), suits for restitution of conjugal rights, suits for jactitation of marriage, and all causes, suits and matters matrimonial are vested in the Supreme Court of the State.

CAUSES FOR ABSOLUTE DIVORCE.—A husband who has been domiciled for three years or more in the State may petition for a dissolution of the marriage on the following grounds:

A. That the wife has committed adultery.

B. That the wife has, without just cause or excuse, wilfully deserted the petitioner and without any such cause or excuse left him so deserted for three years or more.

C. That the wife has, during three years and upwards, been an habitual drunkard and habitually neglected her domestic duties or rendered herself unfit to discharge them.

D. That within one year the wife has been imprisoned for a period of not less than three years and is still in prison under a commuted sentence for a capital crime, or under sentence to penal servitude for seven years or more.

E. That within one year the wife has been convicted of having attempted to murder her husband, or having assaulted him with intent to inflict grievous bodily harm.

F. That during one year previously the wife has assaulted and cruelly beaten her husband.

A wife may obtain an absolute divorce from her husband by proving:

A. That her husband has committed incestuous adultery.

B. That the husband has committed bigamy with adultery.

C. That the husband has committed rape, sodomy or bestiality.

D. That the husband has committed adultery coupled with such cruelty as without adultery would have entitled the wife to a divorce *a mensa et thoro* (divorce from bed and board) under the laws of England as existing before the enactment of the Imperial Act 20 and 21, Vict. c. 85.

E. Adultery of the husband coupled with desertion without reasonable excuse for two years or upwards.

JUDICIAL SEPARATION.—A judicial separation may be granted on the ground of adultery, cruelty or desertion without legal cause or excuse continued for two years and upwards.

QUEENSLAND.—In this State marriage may be celebrated by any regular officiating minister of religion, or by any district registrar, or by specially authorized justices of the peace.

CAUSES FOR ABSOLUTE DIVORCE.—A husband is entitled to an absolute divorce if his wife has committed adultery, but a wife is not so entitled unless her husband has committed incestuous adultery, bigamy, rape, sodomy, bestiality, adultery coupled with cruelty, or adultery coupled with desertion without reasonable excuse for two years or more.

Incestuous adultery is adultery with a woman within the prohibited degrees.

JUDICIAL SEPARATION.—A limited divorce or judicial separation can be obtained by either spouse on the following grounds:

1. Adultery.
2. Cruelty.
3. Desertion without legal cause for two years.

LEGITIMACY.—Illegitimate children are legitimatized by the subsequent marriage of their parents.

WEST AUSTRALIA.—The Marriage Act of 1894 is virtually an acceptance by this State, so far as practicable, of the English Divorce Act of 1857.

The causes for absolute divorce or for a judicial separation are the same as those given above for the State of Queensland.

SOUTH AUSTRALIA AND TASMANIA.—In these two States, by legislative enactments, the causes for absolute divorce and judicial separation are the

same as those given on opposite page for Queensland, West Australia and South Australia.

The exercise of appellate jurisdiction by the High Court of Justice of the Commonwealth in matrimonial causes has the beneficial effect of making the several States more and more uniform in their local legislation and judicial interpretation.

The federal Parliament has express authority under the constitution to enact a federal code of marriage and divorce which will operate throughout the entire Commonwealth, and such a code in one form or another is inevitable.

The Commonwealth of Australia is not yet a dozen years old, but the need of superseding six separate systems of law respecting marriage and divorce by a national law on the subject is already apparent and under constructive discussion.

Of all the federative dependencies of the British Crown Australia is perhaps the most homogenous in race, religion and traditions, and it will probably be the first to adopt a federal law of marriage and divorce.

CHAPTER XXXII.

Dominion of New Zealand.

The Dominion of New Zealand is a colony of Great Britain consisting of North, South and Stewart Islands, or New Zealand proper, and certain outlying islands, including Cook Island, in the Pacific Ocean.

Its present form of government was established by an act of the Imperial Parliament (15 and 16 Vict., cap. 27) passed in 1852.

The legislative power is vested in the governor and a bicamera General Assembly or Parliament, consisting of a Legislative Council and a House of Representatives. The constitution provides that the General Assembly or Parliament may make laws "not repugnant to the laws of England."

The General Assembly, by an act passed in 1858, declared that: "Whereas, the laws of England, as existing on the fourteenth day of June, 1840, have been applied in New Zealand as far as applicable to the circumstances; but, Whereas, doubt has arisen in respect to such application—Be it declared and enacted, that the laws of England, as existing June 14, 1840, be deemed and taken to have been in force on and after that day and shall hereafter continue in force."

Hence it is apparent that the body of the law of New Zealand is founded upon the jurisprudence of England.

The judicial system includes a Supreme Court of the Dominion, District Courts and courts presided over by stipendiary magistrates.

Marriage.—Males under fourteen years of age

and females under twelve years cannot contract a lawful marriage.

All persons, male or female, under twenty-one years of age, who have not previously contracted a lawful marriage, require the consent of their parents or guardians in order to marry. However, the marriage of males fourteen years of age or more, or of females twelve years of age or more, without the consent of parents or guardians, does not make such marriage *ipso facto* void.

Parental consent to a marriage of a minor must be given by the father, if living and competent to act; if not, then by the following persons in the order stated: (a) the duly appointed guardian; (b) the mother if she has not married again; (c) or a guardian specially appointed by a court exercising chancery powers.

No person can contract a new marriage who has a spouse by an existing marriage still living.

Consanguinity and Affinity.—Marriage is forbidden between all ascendants and descendants *ad infinitum* and between persons related to each other by blood or marriage within the third degree, according to the method of computation of the civil law. According to this reckoning a person cannot marry a relative nearer than his or her own first cousin.

Preliminaries.—Notice of a proposed marriage must be given to the registrar of the district in which one of the parties has resided for three days at least. If the contracting parties live in different districts notice must be given to the registrars of both districts. Such notice must set forth the names, ages, status and occupations of each party, together with their addresses, a statement of the period each party has lived in the district, and the name and place of the church, chapel or other

building selected by the parties for the solemnization of the marriage. The parties must also make solemn declaration to the registrar or registrars to the truth of all statements of fact in said notice and show that there is no legal impediment to the proposed marriage.

Upon receiving the notice in due form the registrar will issue a certificate at once addressed to any officiating minister, or to himself, authorizing the solemnization of the marriage. All marriages must be registered, and the officiating minister or officer who fails to have the record made is subject to punishment.

Ordinarily, the best proof of a marriage is to produce the marriage certificate, together with proof identifying the parties, but if the record is lost, destroyed or never existed proof of the marriage may be given by direct oral evidence.

In most instances it is necessary to produce clear evidence of a marriage ceremony, but in some exceptional cases a marriage may be proved by long reputation. That is, if two persons live together as husband and wife for many years, and if they have always been regarded as such by their friends and neighbours, the courts will presume a legal marriage unless evidence is produced to prove that the parties were not lawfully married.

Divorce.—An absolute divorce may be obtained according to the provisions of the Divorce and Matrimonial Compilation Act of 1904 by a husband or wife who has been domiciled in the Dominion of New Zealand for two years or upwards on the following grounds:

1. Adultery of either spouse.

2. Wilful and continuous desertion without just cause for five years and upwards.

3. Habitual drunkenness for four years with habitual cruelty or desertion on the part of the husband.

4. Habitual drunkenness for four years with habitual neglect of her household duties on the part of the wife.

5. Conviction and sentence to imprisonment or to penal servitude for seven years or upward for attempting to take the life of the petitioner.

ANNULMENT OF MARRIAGE.—A marriage is annulled on the theory that true and proper consent to the marriage contract has never been given by the parties. The causes or grounds for such annulment are:

1. A prior and existing marriage of one of the parties.

2. Impotency or such physical malformation of one of the parties which prevents him or her from consummating the marriage by sexual intercourse.

3. Relationship of the parties within the forbidden degrees of consanguinity or affinity.

4. That the marriage was procured by fraud or violence of one of the parties.

5. Mistake as to identity.

6. That the marriage was performed without the required legal preliminaries.

7. Insanity of one of the parties at the time the marriage was solemnized.

Concerning the sixth cause the tendency of judicial interpretation and construction is to treat the legal requirements concerning formalities to be merely directory and to consider the marriage itself, if at least one of the parties acted in good faith, to be valid.

The courts of New Zealand view many of the statutory requirements concerning marriage to be necessary and proper regulations, and which, if disregarded, subject certain persons to fixed pen-

alties, but are not necessarily essential to the marriage contract.

Effects of Divorce and Annulment.—The parties may remarry. During the pendency of the suit for divorce the husband is liable to provide his wife with maintenance or alimony. The amount granted is within the court's discretion, but generally it is about twenty-five per centum of the husband's income.

Upon the granting of a divorce decree in the wife's favour the court has power to grant the wife permanent alimony, the amount of which depends on all such facts as the husband's fortune and income, the wife's income and needs and the social status of the parties.

If there are children under full age, the issue of the marriage, the court will in the exercise of its discretion make such order concerning their custody, support and education as the ends of justice may require.

Judicial Separation.—Under the Divorce and Matrimonial Compilation Act a decree of judicial separation, which is the same in effect as a divorce from bed and board under the old law, may be obtained by either spouse upon the following grounds:

1. Adultery.
2. Cruelty.
3. Desertion without just cause continued for two years.

Summary Jurisdiction Act.—Besides the ordinary suit for a judicial separation a wife may obtain speedy and inexpensive relief by making an application to a stipendiary magistrate for an order of separation and maintenance.

The causes sufficient for the granting of such relief are:

A. Habitual drunkenness of the husband, coupled with habitual cruelty to, or neglect of, the wife and family.

B. Desertion by the husband of his wife.

C. Habitual cruelty of the husband toward his wife.

D. Neglect of the husband to provide reasonable maintenance for his wife and minor children.

A husband is entitled to summary relief permitting him a separation order upon proof that his wife is an habitual drunkard who habitually neglects her household duties.

CHAPTER XXXIII.

The Hindu Law.

For every person in the world whose rule of civil conduct is based upon the English system of jurisprudence there are two others to whom Hindu law is both binding by political authority and the rule of conscience.

The student of law and world politics will note with interest two impressive facts concerning Hindu jurisprudence in India. The first is that until the accession of British rule in that country the Hindu law was not law in the sense in which the term is understood by lawyers. The second fact is that the acknowledged jurisconsults and commentators upon the Hindu law of to-day are not Hindus, but British and Anglo-Indian jurists.

Prof. Golapchandra Sarkar, in his admirable treatise, says: "The administration of the Hindu law by the English judges shows forth in clear light the administrative capacity, the indomitable energy, the scrupulous care and the strong common sense of the English nation."

In treating of the marriage and divorce laws of over two hundred and twenty-five millions of human beings who are Hindus by race and religion, the first question to be answered is: What is Hindu law? Hindu law is the whole body of rules regulating the life of a Hindu in relation to his civil conduct and the performance of his religious duties grouped together under the general name of *Dharma Sastra,* or religious ordinances.

The ultimate source of this wonderful system is the Veda, but the Hindu also accepts an immemorial custom as transcendant law, contending

that such acceptance is approved in the sacred scripture and in the codes of divine legislators.

In the Mahabharat we read: "Reasoning is not reliable; the Vedas differ from one another; and there is no sage whose doctrine can be safely accepted; the true rule of law is not easy to be known; the ways of venerable persons are, therefore, the best to follow."

The Hindus have for centuries been governed by their own laws, which they regard not as the edicts of a political sovereign, nor as the enactments of a human legislature, but as the immutable commands of the Supreme Being of the universe. With such reverence have these laws been regarded that no Hindu king of whom we have any historical record ever dared to repeal, alter or modify one of them. For the past century such progress as Hindu law has made is due entirely to the action of the British courts in India.

As we called attention to in the chapter on Mohammedan law, there are four distinct systems of jurisprudence in India, all in full operation and effect. Two of these systems, the English law created by the British Parliament and Anglo-Indian law created by the legislative councils, are territorial in jurisdiction, while the others, namely, the Hindu law and the Mohammedan law, are purely personal. That is to say, the Hindu and Mohammedan systems of law apply respectively to Hindus and Mohammedans, and to no one else.

At the beginning of British rule in India the government of the East India Company gave the native inhabitants of the country the privilege of being governed by their own laws in matters relating to marriage, inheritance and religious usages.

In the regulations promulgated by Warren Hastings in 1772, and since in the various civil

acts and charters establishing the law courts, the rule is expressed that in cases relating to marriage, inheritance, succession and religious usages the Hindu law shall apply to the Hindus.

The Privy Council decided in the leading case of Abraham v. Abraham that under the rugulations and acts a Hindu is a man by both birth and religion a Hindu.

In the case of Raj Bahadur v. Bishen Dayal, Mr. Justice Straight said: "If we are correct in our view that the status of a Hindu or Mohammedan under the first paragraph of Section 24, Act VI., of 1871, to have the Hindu law made the 'rule of decision,' depends upon his being an orthodox believer in the Hindu or Mohammedan religion, the mere circumstance that he may call himself or be termed by others a Hindu or Mohammedan, as the case may be, is not enough."

CASTE.—The idea of caste or class distinction so completely permeates every religious and secular institution of India that one cannot understand Hindu law without having in mind the principal features of this social system.

The Vedas, upon which the whole structure of Hindu religion and ethics professes to be based, give no countenance to the present regulations of caste.

The Sanscrit word for caste is *verna*, meaning colour, and this leads us to the true origin of caste distinctions. The *verna*, or colour, of the light-complexioned Aryan invaders who entered India from the Northwest and the *verna* of the dark-skinned aborigines whom they subjugated established the first distinctions of caste.

There are four principal castes to-day among the Hindus, namely:

1. *Brahmin*, or priest caste.
2. *Kshatriya*, or warrior caste.

3. *Vaisya,* or merchant caste.

4. *Sudra,* or servant caste.

A fifth class, called *Pariahs,* are of no caste, and are practically outside the law.

The first three upper classes or castes are also called "twice-born" men, because they are supposed to be regenerated or "born in the Veda."

So, generally, are the distinctions of caste recognized that Pope Gregory XV. found it advisable to publish a bull sanctioning caste regulations in the Christian churches of India.

The Hindus attach great importance to the marriage. It is regarded by them as one of the ten *sankars,* or sacraments, necessary for the regeneration of men of the twice-born classes, and the only sacrament for women and *Sudras.*

The Veda says: "A Brahmin immediately upon being born is produced a debtor in three obligations: to the holy saints for the practice of religious duties; to the gods for the performance of sacrifice; to his forefathers for offspring."

Manu ordains that "after a man has read the Vedas in the form prescribed by law, has legally begotten a son and has performed sacrifices to the best of his power, he has paid his three debts and may then apply his heart to eternal bliss."

The Hindus hold the marriage relation in such respect that the question of the validity of a marriage is rarely submitted to the courts for judicial determination.

The law of the Catholic Church treats marriage as a sacramental contract dissoluble only by death, but the Hindu law goes further by declaring against the remarriage of widows.

This rule of Hindu has been legislated upon by Act XV. of 1856, which makes a Hindu widow eligible for a new marriage, but the marriage of

a widow has never been the practice among Hindus.

Manu says: "A widow who from a wish to bear children slights her deceased husband by marrying again brings a disgrace on herself here below and shall be excluded from the seat of her lord."

Polygamy, or plurality of wives, is permitted by the Hindu law, but is rarely practiced.

Polyandry, or plurality of husbands, is contrary both to the Hindu law and the provisions of the Indian Penal Code.

The three higher castes are permitted to intermarry with the caste next below their own, the issue taking the lower caste or sometimes forming a new caste.

In many ways the theoretical inferiority of the *Sudra* absolves him from the restraints which the letter of the law lays on the three higher castes.

Age for Marriage.—In the Hindu law want of age, though a disqualification for other purposes, does not render a person incompetent to marry.

Ordinarily the lowest age is eight years for females, but a girl may be married before that age if a suitable husband is procured for her. If none of the persons who ought to give a girl in marriage do so before she completes her eleventh year she may choose a husband for herself.

A girl must be given in marriage before she attains puberty. The reason for marrying off a girl before she reaches the age of puberty is that the marriage should be free from sexual desire.

Parental Consent.—The Hindu law vests the girl absolutely in her parents and guardians, by whom the contract of her marriage is made, and her consent or absence of consent is not material. The consent of the parents is required for the

marriage of minors—that is, persons under fifteen years of age. The parties authorized to give or withhold such consent are the father, the paternal grandfather, the brother, a *sakulya* or kinsman in succession.

The want of parental consent, or the consent of the person standing in *loco parentis,* does not invalidate a marriage otherwise legally contracted.

Impediments.—Disqualifications or impediments are absolute or relative. A disqualification which renders a party incompetent to marry any person is absolute, while one which simply renders a party incompetent to a particular person is termed relative.

A woman with a husband living is absolutely disqualified from contracting a new marriage.

Idiots and lunatics are disqualified for civil purposes only, although the Hindu law permits a wife to desert or disobey an insane husband.

Deaf and dumb persons, or those afflicted with incurable or loathsome diseases, are competent to marry, but cannot insist upon conjugal rights. Among the three highest castes (the twice-born) impotency is not an impediment to marriage, but for those of the lowest caste (*Sudras*) it is a disqualification.

A twice-born husband who was impotent was for centuries permitted to appoint a kinsman to beget issue by his wife, but this is now forbidden.

The female must be younger than her husband and of the same caste.

A girl whose elder sister is unmarried, or a man whose elder brother is unmarried, is not eligible for marriage.

Marriage Ceremonies.—Ceremonies of some sort, religious or secular, are requisite to the concluding of a valid marriage. The ceremony

may be that of "walking seven steps" or merely the exchange of a garland of flowers. The question as to whether or not a marriage is ceremonially complete depends largely upon what ceremonies are customary among the parties concerned.

Consummation is not necessary to complete a marriage. In thousands of cases girls under ten years of age have been married to males older than themselves who have died before their wives were old enough for the consummation of marriage. Such a situation has brought about the sad plight of the tens of thousands of child widows in India. If a girl of eight years of age is ceremoniously married to a man and immediately thereafter returns to her father's home to await the time when she shall be old enough to assume conjugal duties, she is from the moment the ceremony of marriage is completed a married woman, and if her husband dies the next day she is an eight-year-old widow whom no orthodox Hindu will marry.

When the British first came to India it was a general practice for widows to voluntarily submit to be burned alive with the corpses of their deceased husbands. This savage practice was called a *suttee,* and by it millions of child and adult widows were burned to death. By a provision of the Indian Penal Code such a death is treated as a suicide, and all who participate in the offence are holden for homicide. We are glad to record that the British Government has so thoroughly enforced the law in this respect that *suttees* have been entirely abandoned by the Hindus.

Consanguinity and Affinity.—Baudhayana says: "He who inadvertently marries a girl sprung

from the same original stock with himself must support her as a mother."

Marriage between ascendants and descendants is unlawful.

Marriage is also prohibited between a twice-born man and a woman who is of the some *gotra,* or primitive stock.

The woman must not be the daughter of one who is of the same *gotra* with the bridegroom's father or maternal grandfather. Neither must she be a *sapinda* of the bridegroom's father or maternal grandfather. *Sapinda* in the Hindu law means descended from ancestors within the sixth degree. That is, from persons in the ascending line within the seventh degree from the intending husband. The *sapinda* relationship ceases after the fifth and seventh degrees from the father and mother respectively.

A *Sudra* has no *gotra* of his own.

Divorce.—Divorce in the ordinary sense is unknown to the Hindu law. The Hindus contend that even death does not dissolve the bond of marriage.

The single case in which a dissolution of a Hindu marriage can be granted by a court of law is under Act XXI. of 1860, which was enacted to meet the complications which arise when one of the spouses becomes a Christian. If the convert, after deliberation for a prescribed time, refuses to cohabit further with the other spouse, the court may upon petition declare the marriage to be dissolved, and either party is free to marry again.

There are some low castes in the Bombay Presidency, in Assam and elsewhere, among whom the practice of irregular divorce and remarriage of the parties prevails. The causes for divorce are mutual consent of the parties and ill-treatment.

These divorces, although permitted by custom, are not recognized by the courts.

Restitution of Conjugal Rights.—A Hindu husband or wife can maintain a lawsuit to obtain a judicial separation against a deserting spouse for restitution of conjugal rights, but a Hindu convert to Christianity cannot obtain such a decree if his wife remains a Hindu.

CHAPTER XXXIV.

The Chinese Empire.

A treatise on the marriage and divorce laws of the world would be incomplete without a chapter dealing with the law of the most compact nationality in history.

Chinese law is the growth of many centuries and is based on immemorial custom, but with all its antiquity and wealth of precedent, it has not yet passed the system of exacting testimony from witnesses by physical torture.

The first evidence of civil law to be found in Chinese history or tradition is the recognition and regulation of the status of marriage. Its fundamental principle is parental authority.

Though in a sense systematic, the laws of China are not as yet in a concentrated or scientific form. Under the present dynasty the collection of laws which is applied by the courts is called *Ta Ch'ing Lii Li*.

Two things are to be said in favour of the laws of China—the first being that every Chinese is within the law, and that the person is considered of more importance than property.

Marriage.—A Chinese is not permitted to have more than one wife. He may, however, in addition, keep concubines, or "secondary wives." Both wives and concubines have a legal status.

The wife is considered to be a relative of all her husband's family, but a concubine is not so considered. It is an offence for a man to degrade his wife to the level of a concubine, or to elevate a concubine to the level of his wife.

The consent of the parties, which is the first

requisite of a valid marriage in Christendom, is legally of no consequence in China. It is the consent of the parents of the respective parties which is material and necessary.

The consent of the father of the woman is sufficient, and if he is dead then the mother may give the necessary consent.

The preliminary stages of a Chinese marriage are elaborately formal. It is the duty of the families of the intended bride and bridegroom to ascertain whether or not the parties have the capacity to conclude marriage. Certain introductions and exchange of social courtesies follow. If everything appears satisfactory the parties acting on behalf of the intended bride send a note of "eight characters" to the parties acting in behalf of the prospective bridegroom, which note is practically a proposal of marriage. If the terms of the proposed marriage are agreed upon the next thing is for the representatives of the parties to draft and execute the articles of marriage.

The courts will hold it to be a marriage if the betrothal is regular, even if there is no consummation.

It is essential to a legal marriage that the written consent of the woman be obtained; it is not sufficient that the woman herself gives free consent.

Fraud makes the marriage a nullity. In his book, "Notes and Commentaries on Chinese Criminal Law," Mr. Ernest Alabaster tells of the case of "Mrs. Wang." It appears that an old reprobate, knowing that the girl's parents would refuse him because of his ugliness of face and character, sent a handsome young nephew to represent him in the marriage negotiations. The impersonation brought about the signing of the contract, and the

old man secured possession of the bride. Soon after the wedding he ill-treated his young wife and one night she strangled him. The court decided that the woman had committed an unjustifiable homicide and that the victim was not her husband.

IMPEDIMENTS.—Intermarriage is forbidden between ascendants and descendants and between kinsmen by consanguinity or affinity up to the fourth degree.

Marriage is also forbidden between persons having the same *Hsing,* or surname.

A free person cannot contract a valid marriage with a slave.

A mother and daughter must not marry father and son.

Marriage is absolutely forbidden to a Buddhist or Taoist priest.

An official must not marry a wife or buy a concubine within his jurisdiction.

It is unlawful for a person of official rank to take as his secondary wife or concubine an actress, singing woman or a prostitute.

No one must marry a female fugitive from justice.

Marriage of a deceased brother's widow is against the law.

It should be remembered that it is a criminal offence to contract an invalid marriage. For example, not very long ago a prince of the Imperial family purchased a singing girl as his secondary wife or concubine. The marriage was declared null and he was sentenced to receive sixty blows for attempting to contract an illegal secondary marriage.

WIDOWS.—A widow or divorced woman can contract a new marriage, but she must first obtain consent of her parents and wait until the customary period of mourning is completed.

DIVORCE.—As an institution divorce is almost as ancient in China as marriage. Marriage is not considered as in any respect a religious contract, but as a status created principally for the comfort of man and the continuance of the race. As woman is considered an inferior creature to man she has not the same rights in or out of a court of law. However, she can obtain, against her husband's will, an absolute divorce on the following grounds:

1. Impotency. If her husband is unable to perform the sexual act a wife can compel him to grant her a deed of divorcement.

2. If a man sells his wife to another the woman is *ipso facto* divorced from both men.

3. If a man induces his wife to become a prostitute, or accepts her earnings as such, the wife is entitled to a decree of absolute divorce.

We can find no other causes which entitle a woman to a divorce from her husband. His adultery, cruelty, abandonment, neglect or drunkenness furnishes no ground for a dissolution of the marriage.

For a husband divorce is very easy. The so-called "seven valid reasons" enable any man so inclined to practically discard his wife when it pleases him. The seven "reasons" or causes are:

1. Talkativeness.
2. Wantonness.
3. Theft.
4. Barrenness.
5. Disobedience to parents of husband.
6. Jealousy.
7. Inveterate infirmity.

The last of the seven reasons permits a man to get rid of a wife who is incurably ill or infirm.

MUTUAL CONSENT.—If husband and wife mutually agree upon divorce the courts, by ancient custom, will ratify their agreement. Although the Chinese law does not consider the consent or non-consent of the parties as of any consequence in creating the status of marriage, it, by a peculiar process of logic, permits them to end the relationship whenever they mutually please so to do.

Perhaps one can easier understand the marriage and divorce laws of the Chinese Empire by remembering that all Chinese laws are supposed to follow the instincts of the people (*Shun po hsing chi ching*).

GENERAL OBSERVATIONS.—The present laws and customs of China are but little changed from the time of the Tang Dynasty, which reigned nearly thirteen hundred years ago.

Then, as now, a poor man who finds himself unable to support his wife, may, if she has no parents to take her back, sell her to his richer neighbour.

The judicial machinery of the Chinese Empire is the elaboration of centuries of customs and precedents. In the first instance parties seeking legal redress apply by complaint to the lowest court having jurisdiction within the district of their domicile. If dissatisfied with the decision an appeal can be made first to the District Magistracy, then to the Prefecture, and after that to the Supreme Provincial Court. If the questions involved are sufficiently important a further appeal may be prosecuted before the Judiciary Board, which sits in Peking and is the highest judicial court in the Empire.

In theory a defeated suitor can appeal from the Judiciary Board to the fountain of law and justice, His Imperial Majesty, the Emperor of

China, but there are few cases, according to the record, which have gone so far.

We are of the opinion that Chinese law will never approach a scientific system until China recognizes the necessity and value of having professional advocates and jurists to point out the way to better things.

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